

Please Note: These transcripts are not individually reviewed and approved for accuracy.

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
BOARD MEETING

JOE SERNA JR., CAL EPA BUILDING
CENTRAL VALLEY AUDITORIUM
1001 I STREET, SECOND FLOOR
SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 23, 2002

9:37 A.M.

Doris M. Bailey, CSR, RPR, CRR
Certified Shorthand Reporter
License Number 8751

James F. Peters, CSR, RPR
Certified Shorthand Reporter
License Number 10063

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

A P P E A R A N C E S

BOARD MEMBERS PRESENT:

LINDA MOULTON-PATTERSON, Chair

DAN EATON

STEVEN R. JONES

JOSE MEDINA

MICHAEL PAPARIAN

STAFF PRESENT:

MARK LEARY, Executive Director

KATHRYN TOBIAS, Chief Legal Counsel

ELLIOT BLOCK, Legal Counsel

DEBORAH MCKEE, Board Assistant

YVONNE VILLA, Board Secretary

EDNA WALZ, Office of Attorney General

--oOo--

I N D E X

	PAGE
Call to order	1
Roll Call	1
Opening Remarks	2
Executive Director Report	3
Agenda Item 39	9
Motion	42
Agenda Item 40	44
Motion	45
Agenda Item 42	46
Motions	52, 63, 64
Agenda Item 43	65
Motion	66
Agenda Item 44	67
Motion	77
Agenda Item 45	78
Motion	79
Agenda Item 48	80
Agenda Item 49	85
Agenda Item 51	93
Motion	96
Agenda Item 52	97
Motion	99
Afternoon Session	101
Agenda Item 47	102
Motion	122
Agenda Item 2	123
Agenda Item 50	186

I N D E X

	PAGE
Agenda Item 29	193
Motion	194
Agenda Item 30	195
Motion	198
Agenda Item 31	199
Motion	208
Agenda Item 32	210
Agenda Item 33	254
Motion	271
Agenda Item 35	272
Motion	274
Agenda Item 36	275
Motion	277
Public Comments	278
Certificates of Certified Shorthand Reporters	285

--oOo--

1 P R O C E E D I N G S

2 --oOo--

3 BOARD CHAIR MOULTON-PATTERSON: Good morning
4 and welcome back to the second day of our January Board
5 meeting.

6 Yesterday we covered items one through 27 and
7 just announced this yesterday, but number 37 and 41 have
8 been pulled, and 34 and 46 were approved on the consent
9 yesterday. We'll be hearing item two after 47 today.

10 I had a request from a Board member that we do
11 permits and enforcement first, so we'll be going to those
12 items, and then back to DPLA.

13 So with that I will turn it -- oh, I guess we
14 better call roll and do ex-parte and all that.

15 Would you call the roll, please?

16 BOARD SECRETARY VILLA: Eaton?

17 BOARD MEMBER EATON: Aye.

18 BOARD SECRETARY VILLA: Jones?

19 BOARD MEMBER JONES: Aye.

20 BOARD SECRETARY VILLA: Medina?

21 BOARD MEMBER MEDINA: Aye.

22 BOARD SECRETARY VILLA: Paparian?

23 BOARD MEMBER PAPARIAN: Aye.

24 BOARD SECRETARY VILLA: Roberti?

25 (Not present.)

1 BOARD SECRETARY VILLA: Moulton-Patterson?

2 BOARD CHAIR MOULTON-PATTERSON: Thank you,
3 here. I'll start off with ex-parte because I know all
4 the Board members got this one.

5 We got, we got an, a letter from Assemblyman
6 Juan Vargas strongly supporting the City of San Diego's
7 request for a matching grant for the Quince Street burn
8 dump, burn site, and I believe all members received that,
9 so I'll ex-parte it for all.

10 Mr. Eaton?

11 BOARD MEMBER EATON: With that I think I'm up to
12 date as well.

13 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
14 you.

15 Mr. Jones.

16 BOARD MEMBER JONES: Thank you, Madam Chair.

17 I just got a e-mail from Mike Sikes in Tehama,
18 and a conversation with Mark Aprea on C&D, and a letter
19 from BFI on Newby, and I think that's it.

20 BOARD CHAIR MOULTON-PATTERSON: Thank you.

21 Mr. Medina.

22 BOARD MEMBER MEDINA: Just a brief chat with
23 Chuck Helget regarding Newby Island.

24 BOARD CHAIR MOULTON-PATTERSON: Thank you.

25 Mr. Paparian.

1 BOARD MEMBER PAPARIAN: Yes, a brief
2 conversation with Paul Relis and John Cupps regarding
3 item 33, 1066 extensions, the South Coast composting rule
4 and C&D.

5 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
6 you. And with that I'll turn it over to Mr. Leary for,
7 he gave his report yesterday but an update, I believe.

8 EXECUTIVE DIRECTOR LEARY: Yes, thank you, Madam
9 Chair, and good morning members.

10 I would like to do a brief supplement to the
11 Executive Director's report. I have two items, first and
12 foremost I'd like to turn it over to Rubia Packard to
13 report on yesterday's external environmental justice
14 advisory committee meeting hosted by Cal EPA.

15 MS. PACKARD: Thank you, Mark. Good morning,
16 Madam Chair and Board members.

17 I attended the Cal EPA advisory committee
18 meeting on environmental justice yesterday on your
19 behalf. We were there, the boards and departments,
20 primarily just as support. The meeting was the first
21 meeting of the advisory committee, and these are the
22 external parties that are, have been pulled together as a
23 result of a statutory directive to advise Cal EPA as they
24 begin to work on their statewide environmental justice
25 policy and strategy.

1 The group consists of two members from community
2 organizations, two from environmental organizations, two
3 from large business, two -- one from small business,
4 excuse me, two planning agencies, and two certified
5 unified program agencies, the CUPAs, local CUPAs, and two
6 from the air districts.

7 All of the members were there yesterday and they
8 provided an introduction, a little bit about their
9 background, and their interest in environmental justice,
10 and what they hope to provide Cal EPA through this group.

11 The meeting was primarily logistics, and
12 basically briefing them on what the statute says, what
13 their responsibilities are, and what kind of a schedule
14 of meetings that they might be having over the next
15 several months.

16 They will be meeting with the internal
17 interagency advisory working group, which is the group
18 that has members from the chairs and the executive
19 officers from the boards and departments, and that is the
20 group that is also assisting Cal EPA in the environmental
21 justice effort. And that meeting will be in mid-March.

22 And then they hope to attend some of the public
23 workshops that are being put on by Cal EPA and OPR, that
24 will be across the state to listen to the public to
25 determine what their issues are and how they might want

1 to focus their advice to Cal EPA.

2 So I'll continue to update you on what's
3 happening. And I did send all of you the information on
4 those environmental justice forms around the state in
5 case you're interested in attending any of them.

6 It sounds as though they might be very
7 interesting. They're doing a lot of outreach to get
8 community groups, people in the communities, public
9 groups, etcetera, to come and talk to Cal EPA OPR and the
10 external advisory group about what their concerns are and
11 what they'd like to see addressed in environmental
12 justice strategy for the state.

13 BOARD CHAIR MOULTON-PATTERSON: We very much
14 appreciate you attending and keeping us updated on that.

15 Did any members have questions of Ms. Packard?

16 MS. PACKARD: And Mark, you said you had
17 something else?

18 BOARD CHAIR MOULTON-PATTERSON: Mr. Leary.

19 EXECUTIVE DIRECTOR LEARY: If the discussion on
20 that is concluded I have one more item, and it kinds of
21 fits into our transition of the permitting and
22 enforcement agenda portion of today's meeting.

23 Pursuant to the temporary waiver regulations, it
24 is my obligation to report to you about the issuance of a
25 stipulated agreement, and I'd like to do that here today.

1 On December 12th the local enforcement agency
2 for San Francisco issued a stipulated agreement to the
3 Sanitary Fill Company, a NorCal Waste Systems company, to
4 allow operations outside the terms and conditions of the
5 solid waste facility permit for the San Francisco
6 transfer and recycling center.

7 The stipulated agreement was issued under the
8 emergency temporary waiver regulations, formerly known as
9 PEP, in response to a request from the operator submitted
10 on September -- November 21st.

11 The stipulated agreement allows the operator to
12 operate a construction and demolition debris sort line
13 outside the permitted sort boundary in the turf building,
14 Mondays through Saturdays, 6:00 a.m. to 6:00 p.m.

15 A temporary emergency arose because of a recent
16 San Francisco rate Board decision that required the
17 operator to implement programs more quickly than
18 expected, and prevented them from constructing a new
19 building for C&D processing around the C&D, existing C&D
20 sort line. The operator also could not find other
21 alternatives to handle the C&D waste stream.

22 After reviewing the agreement and the operator's
23 request, staff asked for further clarification on the
24 following issues:

25 The alternatives explored by the operator prior

1 to requesting the stipulated agreement.

2 Specific information regarding CEQA compliance
3 for the activities covered by the stipulated agreement.

4 Clarification on the date that the existing C&D
5 sort line would stop processing activities.

6 Clarification on the timing of the proposed
7 revised permit that will address the issues in the
8 stipulated agreement.

9 Staff did receive an adequate response to all
10 their questions and concerns. This is the first
11 stipulated agreement issued under these emergency
12 regulations. And as such, there is a need to clarify and
13 concern various issues that led to the circumstances that
14 led to the issuance of the agreement.

15 As LEAs, operators, and Board staff become more
16 familiar with this new tool, I'm sure that the details of
17 the process and the circumstances under which it should
18 be used will become clear.

19 Pursuant to the authority delegated to me which
20 requires that I may be authorized to condition limits,
21 suspend, or terminate a stipulated agreement if I
22 determine that the agreement would be harmful to public
23 health or safety or the environment, I have identified
24 that there is not a need to take any action at this time.

25 Thank you.

1 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
2 you. Any questions?

3 Mr. Paparian.

4 BOARD MEMBER PAPARIAN: Thank you. Yeah, Mark,
5 my understanding is that these agreements get posted on
6 our website. Do you know if that's been done in this
7 case or are we set up to do that?

8 EXECUTIVE DIRECTOR LEARY: I'll defer that to
9 Mark De Bie.

10 MR. DE BIE: Mark De Bie with Permitting and
11 Inspection.

12 Staff was trying to figure out the best timing
13 to actually post them on, and we felt that after the
14 Executive Director had his review and reported to the
15 Board it might be appropriate at that time to post it on
16 the website given the fact that, you know, the stipulated
17 agreement may be modified or changed by action of the
18 executive director. So we didn't want to post one and
19 then post another one if it did get changed.

20 So today we will submit this particular
21 stipulated agreement for posting on the website. The
22 previous one that was issued by the San Luis Obispo
23 County LEA under the Board's policy at the time is on the
24 website.

25 BOARD MEMBER PAPARIAN: Thank you.

1 BOARD CHAIR MOULTON-PATTERSON: Thank you.

2 Okay.

3 We'll go to Ms. Nauman and item 38.

4 MS. NAUMAN: Good morning, Board members, Julie
5 Nauman, Permitting and Enforcement.

6 Item 38 has been pulled, so we'll move then to
7 item 39 which is consideration of a revised solid waste
8 facility permit for Cold Canyon Landfill in San Luis
9 Obispo. And I believe Jenifer Kiger will be making the
10 presentation, and the LEA is also present.

11 MS. KIGER: Thank you, Ms. Nauman.

12 BOARD CHAIR MOULTON-PATTERSON: We can't hear
13 you. Could you just get a little closer or check that
14 it's on.

15 MS. KIGER: Can I just speak loudly?

16 BOARD CHAIR MOULTON-PATTERSON: There.

17 MS. KIGER: There it's on.

18 BOARD CHAIR MOULTON-PATTERSON: Thank you.

19 MS. KIGER: Thank you, Ms. Nauman. Changes have
20 been made to the agenda item since the item was
21 published, so copies of the revised items and the
22 attachments are available in the back of the room.

23 The proposed permit is for the revision of the
24 February, 1994 solid waste facility permit for Cold
25 Canyon Landfill.

1 Cold Canyon Landfill is currently owned by the
2 Corral de Piedra Land Company and operated by Cold Canyon
3 Landfill, Incorporated. The operator additionally
4 operates the separately permitted compost facility under
5 registration permit that is currently in the process of
6 up tiering to a new standardized permit which you'll hear
7 next month.

8 The proposed permit identifies the following
9 changes:

10 An increase in the maximum daily tonnage from
11 750 tons per day to 1,200 tons per day.

12 An increase in the permitted traffic volume from
13 340 vehicles per day to 542 vehicles per day.

14 The permit establishes an estimated closure year
15 of 2012, and incorporates and improves the new 2001
16 report of disposal site information.

17 The permit additionally authorizes the following
18 ancillary operations:

19 On site construction, demolition material
20 recycling, and on site composting for up to a maximum of
21 5,000 cubic yards of active compost on no more than seven
22 acres of landfill in addition to the adjacent composting
23 facility.

24 Staff reviewed the proposed permit and
25 supporting documentation and have made the following

1 findings:

2 County Integrated Waste Management Plan
3 conformance. On December 20th, 2001 the Office of Local
4 Assistance staff found the location of Cold Canyon
5 Landfill as identified in the San Luis Obispo County
6 siting element, and therefore the proposed permit for the
7 landfill is in conformance with PRC Section 50001.
8 However, the proposed permit additionally authorizes on
9 site composting operations on the landfill in addition to
10 the adjacent composting facility.

11 Composting activities are not presently
12 identified in either of the counties non-disposal
13 facility element or the county-wide siting element at
14 this location.

15 Mr. De Bie will further discuss this issue.

16 MR. DE BIE: Thank you, Jenifer. I just wanted
17 an opportunity to clarify this particular issue and why P
18 and I staff don't have a finding to offer you at this
19 time.

20 As the Board may be aware, we defer conformance
21 findings to our colleagues in the Office of Local
22 Assistance, and through that consultation they identified
23 that, you know, certainly the landfill is identified in
24 the siting element; however, the fact that composting is
25 occurring on the landfill site, it's not identified

1 either in the siting element or in the NDFE.

2 The Board has indicated to staff in the past
3 that relative to these findings it's a dot on the map.
4 However, staff isn't, doesn't have the level of clarity
5 relative to this particular issue where you do have a
6 landfill and it's a dot on the map, but then you have a
7 compost activity on the landfill.

8 If this particular compost activity was sited on
9 a separate parcel away from the landfill, it would
10 require a separate solid waste facility permit and would
11 need to be identified in the NDFE.

12 The fact that it's located on the landfill
13 brings up issues of whether that sort of requirement
14 should still apply or whether it's good enough just to
15 have the landfill identified in the siting element.

16 So that's P&I's understanding of why, you know,
17 OLA has not been able to come to a complete conclusion
18 relative to this issue.

19 And I think at this time if the Board has any
20 questions on this particular issue it might be
21 appropriate to discuss that. And I believe Catherine
22 Cardozo is available from OLA to assist the Board in
23 understanding this issue in particular.

24 Jenifer will complete her presentation, and in
25 doing so you'll, you know, it will become clear that

1 we're able to make all the other findings except for this
2 particular one. So we're looking for the Board for some
3 assistance in the determination on this particular point.

4 BOARD CHAIR MOULTON-PATTERSON: Senator Roberti.

5 BOARD MEMBER ROBERTI: If I understand, the
6 composting element is not described on the landfill
7 permit?

8 MR. DE BIE: I can speak to the permit issue.
9 The compost facility is described as an aspect of the
10 landfill. The permit does have a condition in it that
11 indicates that until such time as the NDFE is amended and
12 approved by the Board, the compost activity will not
13 occur, it will not take place.

14 So there is that condition in the solid waste
15 facility permit at this time indicating that, again, that
16 the compost activity cannot take place until such time as
17 the Board has an amendment.

18 BOARD MEMBER ROBERTI: And we're not in, in this
19 revised permit, does that in any way alter that?

20 MR. DE BIE: No, this is included in the revised
21 permit.

22 BOARD MEMBER ROBERTI: This is included in this
23 permit? Okay, that's included in this permit?

24 MR. DE BIE: Yes. And I believe that's through
25 discussions with Board staff and the operator and the LEA

1 it was thought that perhaps this is one way of addressing
2 this particular issue is sort of setting up a phasing of
3 the compost that's dependent on a finding in the NDFE or
4 action on the NDFE.

5 BOARD MEMBER ROBERTI: Okay.

6 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

7 BOARD MEMBER PAPARIAN: Is the local government
8 in the process of amending the NDFE right now?

9 MS. CARDOZO: It's my understanding -- Catherine
10 Cardozo from the Office of Local Assistance.

11 It's my understanding, I don't have the document
12 in hand, that the County Board of Supervisors met
13 yesterday and did, according to Steve Fuller with the
14 local enforcement agency, that the County Board of
15 Supervisors did approve the amended NDFE which does
16 include now the composting facility on site. It did not
17 previously.

18 BOARD MEMBER PAPARIAN: Okay. So does that
19 action by, is any further action needed for that to be
20 implemented or is that, if they took this action
21 yesterday, is this now identified in the NDFE or --

22 MS. NAUMAN: Well the Board would still have to
23 act, this Board would still have to act.

24 BOARD MEMBER PAPARIAN: We still have to approve
25 any change.

1 MS. NAUMAN: Right it's a two step process. And
2 generally the process is it occurs at the local level and
3 then the Board then approves that amendment, and then
4 it's in place for purposes of permitting. So we're just
5 missing that last step. It's a matter of timing.

6 BOARD MEMBER PAPARIAN: Yeah. How soon would
7 you expect that to come here?

8 MS. CARDOZO: Next month, February.

9 BOARD MEMBER PAPARIAN: Next month.

10 MS. NAUMAN: So in the meantime they're dealing
11 through the condition in the, in the permit to delay the
12 effective implementation of the composting operation
13 until such time as your Board has an opportunity to act
14 on the amended NDFE.

15 BOARD MEMBER PAPARIAN: If we were to, I think a
16 representative of the operator may be here. If we were
17 to seek a delay of a month until we acted on the NDFE,
18 what harm would come to the operator? I think I'm asking
19 for the representative of the operator to answer that.

20 MR. DE BIE: Just before Sean speaks, the permit
21 does allow several other changes at the facility, so
22 those would be affected for a month, they wouldn't be
23 able to implement those. But Sean can give you more
24 detail.

25 MR. EDGAR: Hi, Sean Edgar on behalf of Cold

1 Canyon Landfill.

2 Board member Paparian through the Chair to
3 answer your question, the landfill operator, there are a
4 variety of other activities occurring at the landfill
5 that are necessary to achieve this permit with all due
6 speed with regard to the traffic, the traffic volume that
7 we've identified for expansion. The facility operator
8 identified that a while ago and started the process with
9 the LEA to go through identifying all the needed changes,
10 because we find that the traffic at the landfill gate as
11 well as the peak tonnage issue has been of concern in
12 operating the facility.

13 So the direct answer is that the day-to-day
14 operations of the landfill could put the, by setting it
15 back another thirty days the landfill operator would risk
16 having to operate outside the terms and conditions for
17 that period, and what we felt if, in the revised permit
18 that you see before you, the new condition T, by
19 limiting, the operator offered the suggestion in order to
20 avoid any confusion over this NDFE issue, we came forward
21 to further condition the permit to stipulate that the
22 composting operation would not occur until this Board,
23 this Board concurred.

24 That is on the Board agenda for February. We
25 feel very comfortable that we've provided the stipulation

1 to prevent the activity from occurring while the Board is
2 in progress on this item. We know that it's gone through
3 the local process, and there are other activities at the
4 landfill that will suffer over the next thirty days if
5 the operator is made to wait.

6 BOARD MEMBER PAPARIAN: Okay. Let me just make
7 sure I understand that. I'm not sure I understood it
8 from the staff presentation as well as perhaps I should
9 have.

10 There's a stipulation in the permit that we
11 would be approving that says that no, no composting would
12 occur until an NDFE is approved by this Board?

13 MR. DE BIE: Yes, that's how the condition is
14 written. It is in attachment, attachment one, I believe,
15 the last page of the permit, condition 17T.

16 MS. KIGER: Yeah, in the revised attachment one
17 it's the last page, condition T, it should be
18 underlined.

19 BOARD CHAIR MOULTON-PATTERSON: I see it.

20 BOARD MEMBER PAPARIAN: I see it, yeah. I don't
21 have any other questions right now.

22 BOARD CHAIR MOULTON-PATTERSON: Page 404.

23 BOARD MEMBER ROBERTI: Madam Chair.

24 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones and
25 then Senator Roberti.

1 BOARD MEMBER JONES: Thanks, Madam Chair. For
2 Mr. Schiavo, under the definitions under statute under
3 the NDFE, isn't it, isn't there a caveat in there that
4 the NDFE doesn't have to be updated every time, it needs
5 to be updated every five years for any additions as long
6 as it's been -- I mean we've had this discussion a couple
7 of times, just add a little more murkiness to this.

8 There is a, the NDFE may have gone away, I don't
9 know, I haven't read it, but I know the issue came up
10 where when the law was passed, if there were additions
11 locally to the NDFE, that NDFE only needed to be revised.
12 Those changes would become, or recognized at the time of
13 revision from this Board.

14 MR. SCHIAVO: Let's see. My --

15 BOARD MEMBER JONES: It was under the NDFE not
16 the siting element. They were very different in what the
17 requirements were.

18 MR. SCHIAVO: Under the NDFE we have been
19 bringing forward to the Board each month a revised NDFE
20 for those facilities that were not identified in the
21 original --

22 BOARD MEMBER JONES: Right.

23 MR. SCHIAVO: -- one. And so, so that's our
24 updating process, and so we do do on a constant basis, if
25 it's not identified, the dot on the map issue got to

1 whether they're expanding or taking more tonnages, and
2 whether or not that particular facility existed. So
3 there is a difference in this case that just didn't
4 exist, so --

5 BOARD CHAIR MOULTON-PATTERSON: Mr. Block, did
6 you want to add something to that?

7 LEGAL COUNSEL BLOCK: Yes, okay. Oh, it does
8 work, okay. First time trying this one out, this side.

9 There's two different provisions in it, this
10 comes up a lot in the whole NDFE siting element
11 conformance setup.

12 There's provisions relating to the five year
13 review that has to occur, that's a separate item than the
14 conformance item requirements. And what's happened, in a
15 couple of cases it's probably been referred to in a
16 couple of items, for purposes of the permit conformance
17 finding, for instance on an NDFE, the facility simply
18 needs to be identified in an NDFE. One, the statute
19 speaks in similar, but you may have a number of
20 jurisdictions that use it.

21 For the purposes of a permit finding, one NDFE
22 needs to be amended, and then what we've probably said on
23 a number of occasions is that all these other
24 jurisdictions that are going to use it, they will have to
25 update their NDFEs as well, and that's the five year

1 review process.

2 But in terms of the permit requirement, at least
3 one NDFE needs to be amended and approved by the Board
4 prior to the, to meet the requirements for the permit.

5 BOARD MEMBER JONES: Cause 41736 speaks to it
6 about taking the NDFE revisions and making part of the
7 SRRE on a five year review basis. And I know that that's
8 come up here a lot.

9 I mean here we've got a county that's approved
10 it and a condition that says you can't use it until it
11 comes in front of the Board, and a statute that says the
12 SRRE doesn't have to be reviewed, doesn't even have to
13 address it for every five years, whatever those changes
14 were to the NDFE.

15 LEGAL COUNSEL BLOCK: Right, and again that's
16 the update function as opposed to the permit function.

17 And the other distinction, just to make that
18 clear I think it's sort of come up indirectly here, the
19 Public Resources Code Section 50001, the conformance
20 finding statute, does distinguish between siting elements
21 and NDFEs.

22 The siting element for purposes of conformance
23 finding only has to be locally approved, but the
24 non-disposal facility element has to be Board approved,
25 and so that's why we have on a number of occasions

1 scheduled agenda items so we approve the NDFE amendment
2 the same day but earlier than the permit.

3 BOARD CHAIR MOULTON-PATTERSON: Senator
4 Roberti.

5 BOARD MEMBER ROBERTI: Thank you. Have we ever
6 approved a non-disposal facility element prior to the
7 approval of the final permit?

8 MS. CARDOZO: There have been several occasions
9 where a jurisdiction has amended their NDFE.

10 BOARD MEMBER ROBERTI: Excuse me. Excuse me.

11 MS. CARDOZO: The opposite?

12 BOARD MEMBER ROBERTI: Yeah.

13 MS. CARDOZO: It's my understanding that the one
14 time we have done that was for the City of Avalon last
15 year, I believe, when they were in the process of
16 amending the NDFE but it hadn't been approved by the
17 Board.

18 BOARD MEMBER ROBERTI: So we -- yeah, I remember
19 the Avalon one. And then what was the gap of time on
20 that one?

21 MS. CARDOZO: March to July. There was a
22 question of them not submitting the appropriate
23 documentation for a complete submittal of an amended
24 NDFE.

25 BOARD MEMBER ROBERTI: And the amount of time on

1 this one would be, assuming everything goes?

2 MS. CARDOZO: One month.

3 BOARD MEMBER ROBERTI: One month, okay.

4 BOARD CHAIR MOULTON-PATTERSON: Any other
5 comments?

6 MR. DE BIE: I'd like Jenifer to finish up her
7 presentation now.

8 BOARD CHAIR MOULTON-PATTERSON: Okay.

9 MR. DE BIE: Thank you.

10 MS. KIGER: Thank you. I'd like to clarify
11 something for the Board members before I move on. The
12 condition on composting in the permit addresses the
13 composting of up to 5,000 cubic yards on seven acres.
14 That operation will not continue, will not start until
15 after the NDFE is approved.

16 The next finding is conformance with state
17 minimum standards. Board staff performed a pre-permit
18 inspection of the facility on January 11th, 2000. No
19 violations were noted at the time of inspection.

20 On May 18th, 2001, stipulated notice and order
21 number 2001-1 came into effect to correct the methane gas
22 issue. The order identified a compliance schedule for
23 construction of a new perimeter gas monitoring probe,
24 revision of the landfill's perimeter gas monitoring plan,
25 and established a temporary modification of the perimeter

1 gas monitoring program.

2 All compliance tasks were completed for the
3 stipulated notice and order on October 15th, 2001 as
4 required.

5 On September 27th, 2001, stipulated agreement
6 number 2001-2 came into effect. Under this agreement the
7 operator is allowed to actively compost up to a maximum
8 2000 cubic yards of green material at one time on
9 approximately a one acre area located on top of landfill
10 module five.

11 On December 18th, 2001, the LEA granted the
12 operator's request for a ninety day extension of the
13 stipulated agreement. This extension expires on March
14 26th, 2002, or when the solid waste facility permit is
15 revised to allow for on-site composting on the landfill,
16 whichever comes first.

17 Melissa St. John of the LEA's office is here,
18 and will now give the LEA's required report on the
19 issuance of the extension to the stipulated agreement.

20 MS. ST. JOHN: Good morning, I'm Melissa St.
21 John with the San Luis Obispo County local enforcement
22 agency.

23 On September 27th, 2001, after a request from
24 the operator, the San Luis Obispo County LEA issued a
25 stipulated agreement to Cold Canyon Landfill to allow a

1 small part of, as Jenifer indicated, up to 2000 cubic
2 yards of composting on a one acre area of the landfill
3 outside the terms and conditions of the solid waste
4 facility permit.

5 The stipulated agreement was due to expire on
6 December 26th, 2001, but contained a condition allowing
7 for one extension. The purpose for allowing the
8 extension was that the stipulated agreement was limited
9 to a ninety day timeframe, but the compost process used
10 at the landfill requires 120 days or more to complete the
11 cycle. Therefore, it was anticipated that the composting
12 begun on the landfill would not be completed before the
13 expiration of the stipulated agreement.

14 The San Luis Obispo County LEA issued the
15 extension to the stipulated agreement on December 18th,
16 2001, following a request by the operator received by the
17 LEA on December 14th.

18 BOARD CHAIR MOULTON-PATTERSON: Excuse me,
19 Senator Roberti has a question, comment.

20 BOARD MEMBER ROBERTI: I guess related to this
21 and related to what I asked earlier. I'm, if somebody
22 could speak to why we have to have the one month gap and
23 why we can't hear it all at the same time?

24 And the reason isn't that I specifically have a
25 problem with the County of San Luis Obispo who I think,

1 from my reading of this, are fine, but this Board is the
2 Integrated Waste Management Board in which case we should
3 hear everything at the same time. We aren't a
4 inconvenient hurdle that has to be sort of jumped through
5 or checked off, and therefore it doesn't have to be done
6 all at the same time, we just check off that we got the
7 approval. And actually the problem's even greater when
8 it's only one month. Why bifurcate it?

9 MS. KIGER: I can address that.

10 BOARD MEMBER ROBERTI: Yeah.

11 MS. KIGER: When, both permits were meant to be
12 heard at this Board meeting. At the time when the
13 proposed permit came forward for the compost facility
14 which was already operating under the registration tier
15 permit, it was not known until Office of Local Assistance
16 made their finding that when the registration permit was
17 issued back in '96 that the facility was not identified
18 in the NDFE. So the composting facility's pretty black
19 and white, it's not identified in the NDFE for that
20 location.

21 However, the landfill is identified in the
22 county siting element. So for one permit it's kind of
23 black and white, for the landfill permit it's a little
24 bit gray because a couple Board members are asking the
25 question, should the additional ancillary facilities like

1 composting additionally be identified in the NDFE.

2 BOARD MEMBER ROBERTI: Okay.

3 MR. DE BIE: I'm sorry, Senator -- I'm sorry.

4 Jenifer started talking about another permit, and I just
5 wanted to clarify that there is a compost facility sited
6 adjacent to the landfill, completely separate from the
7 landfill. There were issues associated with that
8 particular facility relative to its permit.

9 BOARD MEMBER ROBERTI: That's a different
10 composting facility?

11 MS. KIGER: Yes.

12 MR. DE BIE: Let's try to view it as different
13 even though it's the same operator and that sort of
14 thing. But yes, it's a completely separate issue.

15 That permit has been delayed, as Jenifer
16 indicated, and so the strategy that was devised by the
17 operator of the compost facility, which does have the
18 landfill also, was to utilize the landfill property to
19 handle the situation until the compost facility permit
20 could get updated, or get issued actually.

21 And so that required the stipulated agreement
22 that the LEA is reporting on, and the extensions to
23 that. It also required the operator then to identify
24 composting as an aspect of their landfill operation in
25 order to deal with the current situation and future

1 situations where they may run into flow issues and they
2 want to have the option to compost on the landfill site
3 also.

4 In terms of your initial question of why can't
5 it all come up at once, that's staff's wish is that all,
6 that we can make the findings all at the same time.

7 There is ambiguity about this particular issue,
8 whether the dot on the map is applicable to this
9 situation or not. Also, when requests or suggestions
10 were made to the LEA and the operator about deferring
11 this permit until the NDFE situation was fully resolved,
12 the response was no, we'll bring it forward.

13 BOARD MEMBER ROBERTI: I guess my problem goes
14 beyond, a little bit goes beyond hearing it at two
15 separate hearings. But I guess my general recurring
16 problem with dot on the map, and that is that two
17 facilities at the same spot should be considered in more
18 general terms than just a dot on the map. I guess if
19 it's just a dot on the map we can hear it next month.

20 If you take the broader view that I have, and I
21 think they should all be heard together because the
22 composting facility affects everything else that goes on
23 there in terms of traffic, inconvenience, whatever,
24 whatever, I don't know the geography of the place.

25 So Madam Chair, I don't know what I'm going to

1 do, I hate voting against this --

2 BOARD CHAIR MOULTON-PATTERSON: Well --

3 BOARD MEMBER ROBERTI: -- but on the other hand,
4 we're the Integrated Waste Management Board and these
5 things should be heard in an integrated fashion
6 together. That's why we're not the solid waste Board
7 anymore. And to me it seems like that's how custom and
8 tradition has continued to cause us to operate.

9 So whatever, I think I'm going to abstain on
10 this. Not because I have a problem, but because of the
11 method of bringing it before us. It's not brought to us
12 as the Integrated Waste Management Board, it's brought to
13 us as if we were the solid waste management board or
14 whatever our name used to be.

15 BOARD CHAIR MOULTON-PATTERSON: I'm very
16 uncomfortable with this also. Didn't we know that the
17 Board of Supervisors was going to act on this? Couldn't
18 we have had a placeholder or something so we could have
19 done it all together?

20 MS. NAUMAN: Well this is, again, a situation
21 where the clock is running, and we did talk with the
22 operator, as Mark indicated, and expressed all the same
23 concerns that you're discussing. And it was their
24 decision to bring this forward to the Board for your
25 decision on it.

1 But I think the facts are clear that they are
2 amending the NDFE for purposes of the other facility,
3 that will be completed next month, that will also then
4 apply to this permit. So all three things can be dealt
5 with, could be dealt with next month as a package, but
6 the operator would, I assume, need to waive time.

7 BOARD CHAIR MOULTON-PATTERSON: So you're
8 representing the operator, Mr. Edgar?

9 MR. EDGAR: Sean Edgar on behalf of the
10 operator.

11 What I'd like to do is provide a little bit of
12 clarity, perhaps provide an integrated answer to Senator
13 Roberti's integrated question.

14 Precisely with the issue what, we're struggling
15 with a very small portion of this landfill permit that is
16 in front of you today.

17 As I mentioned to you, five of the operational
18 changes regarding tons, traffic, there is no CEQA issue,
19 Senator, with regard to CEQA staff having reviewed the
20 adequacy of five of the six elements, what we're
21 discussing is the planning document.

22 We're going further into the nuances of the
23 planning document and we're discussing whether a 5,000
24 ton operation or 5,000 yard operation on top of the
25 landfill as a resource recovery operation is, should be

1 named in a particular diversion document as opposed to
2 the document that it's currently named in.

3 Just to provide a little bit of clarity, I have
4 in front of me the summary plan from the County of San
5 Luis Obispo. Cold Canyon Landfill is a dot on the map in
6 the summary plan for San Luis Obispo.

7 The non-disposal facility element for San Luis
8 Obispo currently describes composting efforts to reduce
9 the flow of materials to the Cold Canyon Landfill. It's
10 anticipated that an aggressive composting program will
11 substantially reduce the rate at which materials are
12 landfilled.

13 What I'd like to bring to your attention is that
14 this facility serves the entire south county waste shed
15 of San Luis Obispo County. It's been in place since
16 1965. This facility has been the logical place when AB
17 939 came along to recover as many materials as opposed to
18 putting them in the fill we've tried to recover them at
19 the landfill.

20 What I can say with some security is that the
21 local process, the siting element not only identifies
22 Cold Canyon Landfill on the map, but every other planning
23 document that I have in front of me today speaks to
24 composting efforts to reduce materials into the landfill.

25 I step forward to the local efforts in order to

1 achieve this non-disposal facility element. We started
2 that process several months ago with the local task
3 force, so I can stand here today with confidence and say
4 that the local task force who's responsible for this AB
5 939 planning document, which is just a very small part of
6 the permit that we're looking at today, the local task
7 force has approved this additional level of effort to
8 describe this facility, understanding that the facility
9 is already in the siting element, it's described
10 generically in the non-disposal facility element;
11 however, several months ago we identified the need to
12 bulletproof, if you will, to make sure that there's no
13 confusion. So we've gone forward, through the local task
14 force, through the Board of Supervisors, and that
15 document is here before the Board.

16 So just to clarify with regard to planning
17 documents, like I say, this is a small part of the permit
18 before you. There are five other elements that the
19 operator will be at jeopardy of potentially having
20 violations of conditions pertaining to the every day
21 operations which have already been consistency with
22 regard to CEQA conformance which is not an issue with
23 this Board staff.

24 And I'd like to draw your attention to past
25 practice here at the Board, not only the situation with

1 City of Avalon and Pebbly Beach, Davis Street transfer
2 station and the City of San Leandro's NDFE from 1999 and
3 2000. That was also an instance where the Board
4 recognized a need to approve this permit, and if there is
5 a small planning document nuance that needs to be
6 clarified at a later date, then that's been Board past
7 practice.

8 So I'd be happy to answer whatever other
9 questions you might have, but I just wanted to provide
10 clarity.

11 BOARD CHAIR MOULTON-PATTERSON: Senator
12 Roberti.

13 BOARD MEMBER ROBERTI: I think Mr. Edgar's
14 listing the past precedents, if they are, underscores my
15 problem. My problem is not based on the information that
16 I have here with Cold Canyon, or with your presentation,
17 and I don't want to vote against it.

18 However, my problem is if we have before us a
19 few months from now, whenever a more unscrupulous
20 operator wanting to bifurcate or trifurcate the
21 application, and we out of custom do that because we're
22 not acting in an integrated fashion, and then that
23 operator's representative comes forward and says, "Well
24 you did it in Cold Canyon, and you did it in Avalon," or
25 wherever, it's very dangerous.

1 We are moving away from what this Board should
2 be doing, and that is looking at a facility in an
3 integrated fashion. And it really strikes me as strange,
4 it's only one month, and I've heard all the arguments,
5 but if we, if we make the exception when it's only one
6 month, that almost is signaling that you can take up any
7 facility's application on a piecemeal basis, and this
8 Board only views itself as sort of an unnecessary,
9 unfortunate hurdle that has to be gone through and you
10 sort of check it off. And then next month we'll check it
11 off the next month.

12 If we are not jealous of our own jurisdiction,
13 and the way we look at an issue, nobody else is going to
14 do that for us. Our duty is to look at these things in
15 integrated fashions, and not to create a precedent where
16 the bizarre landfill comes up a year from now and cites
17 Cold Canyon as the example for doing what we shouldn't be
18 doing.

19 I do not have a problem with your landfill based
20 on the information, I'm anxious to vote for it, but I'm
21 not anxious to create anymore of a precedent than we have
22 already created for hearing these things on a piecemeal
23 basis.

24 MR. EDGAR: Madam Chair, if I may? Just to, as
25 a method for the operator to further stipulate, if the

1 concern that we have is the compost, the operation of
2 composting on landfill, which we all agree is in the AB
3 939 best interest, however may not be one hundred and ten
4 percent described in not only, it is a dot on the map in
5 the county documents, however the non-disposal facility
6 element, as we mentioned, which is in question now, what
7 we have done is linked these two items from the
8 standpoint of the condition T which we shared with you in
9 the documents.

10 So what we've said is that if this Board has a
11 particular issue about one out of six operational points
12 for this landfill, we have voluntarily agreed to limit
13 the operation, not perform that operation. There is no
14 question that all the other activities at the landfill,
15 the CEQA staff with regard to consistency, every other
16 operation, C&D recycling, the landfill gas system and
17 operation, there is no question that every other element
18 of this landfill is in complete conformance with a
19 planning document.

20 And what we have voluntarily tried to do is to
21 further allay any concerns that this Board might have,
22 Senator, by tying the two together. Saying, if there is
23 one small portion that this Board does not approve of, we
24 stipulate that that one small portion will not occur
25 until such a time as this Board concurs, but please allow

1 us to continue to operate this landfill in a method that
2 achieves the traffic and tons and all of the other items
3 that have been looked at at the CEQA --

4 BOARD MEMBER ROBERTI: And I appreciate what
5 you're saying, and if I were representing Cold I would
6 say exactly the same thing, and you're doing your job
7 very well.

8 But we're, the process is integrated not only
9 from our side but from the applicant's side as well. And
10 applicants have to create a mindset that their whole
11 facility is an integrated entity as well. And the
12 composting facility affects the other aspects, the
13 non-disposal facility affects the landfill in a hundred
14 and one ways, traffic just being one of them. I mean I
15 can't think of all the ways, I'm not an engineer.

16 But I think it stands to common sense that they
17 do affect each other, and your application should be
18 integrated just as our response should be integrated, at
19 least that's how I feel.

20 And I'm not quarreling with your presentation or
21 with your landfill, it's a custom that's just built up
22 that I think we should review.

23 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

24 BOARD MEMBER JONES: Oh, Mr. Eaton.

25 BOARD MEMBER EATON: I just have a question of

1 Mr. De Bie. Currently they're operating under a
2 stipulated agreement?

3 MR. DE BIE: That's correct.

4 BOARD MEMBER EATON: Now is that for one
5 condition or all five or six?

6 MR. DE BIE: That was just for allowing the 2000
7 cubic yards of compost to occur December on, to go
8 through the 120 day cycle.

9 BOARD MEMBER EATON: Okay.

10 MR. DE BIE: And the LEA was in the middle of
11 reporting the status of their extension.

12 BOARD MEMBER EATON: Okay. Well the one thing,
13 and I, just maybe I can perhaps find a road here that
14 might maintain the integrity of the positions, because at
15 first glance the gut level dot, no dot, those kinds of
16 things, we've had those situations, what I was hoping for
17 is they were operating under a stipulated agreement for
18 all six conditions by then which Senator Roberti could
19 maintain the integrity of his position, i.e., the fact
20 that until, you know, something gets done in correct
21 sequence then you wouldn't approve it; and at the same
22 time try and split the bath water with Mr. Edgar which
23 would allow for the other five conditions to occur.

24 So my question for counsel is that the LEA has
25 entered into an agreement, and I'm just proposing this to

1 maintain the integrity of the position because I think
2 that that is a strong argument; and yet, you know, on the
3 other side there's equal arguments for holding up what
4 would be a condition precedent. That if the Board, but
5 if the Board were to signal that perhaps extending for
6 another, whatever, 30 or 45 days, adding onto the
7 stipulated agreement, that they could operate under the
8 other five conditions, not the compost, but the other
9 conditions that they say need for forever, could that be
10 something the Board could instruct the LEA, or could our
11 staff do such a direction? And therefore what you would
12 have at the end of it would be the operator being able to
13 operate under those five or six conditions, whatever we
14 thought were appropriate under the permit, nothing to do
15 with the compost. And then give them time to bring it,
16 which would maintain the integrity of the Senator's
17 argument, and at the same time the operator's desire to
18 operate under those five conditions that they say he
19 really, none of us seem to have a problem with, at least
20 thus far.

21 And so those are my questions.

22 BOARD CHAIR MOULTON-PATTERSON: Did you want to
23 ask the counsel?

24 BOARD MEMBER EATON: It's a solution, I'm not
25 sure, but it maintains the process which I think is what

1 you're saying.

2 BOARD CHAIR MOULTON-PATTERSON: Ms. Tobias or
3 Mr. Block.

4 LEGAL COUNSEL TOBIAS: So your question is could
5 the operator continue to operate under this so-called
6 stipulated agreement adding in the other conditions for a
7 certain amount of time? Is that --

8 BOARD MEMBER EATON: Well no, that's not, they
9 would, could they, could they, the stipulated agreement
10 be extended and add conditions to that stipulated
11 agreement and delete certain conditions to that
12 stipulated agreement?

13 Because if you allowed the extension on all the
14 conditions you allow the compost to go forward, and I
15 think that's what at least is the issue here, and that
16 seems to be the consensus that if it's a condition, the
17 operator as well as one member of this Board does not
18 want that to happen.

19 So what you would do is you would have the LEA
20 enter into a stipulated agreement under the delegated
21 authority of the executive director to add conditions to
22 that order.

23 And that just maintains respect -- it's a
24 solution, but that maintains respect of positions, and no
25 one is injured but you still get to move forward.

1 BOARD CHAIR MOULTON-PATTERSON: Counsel, do you
2 have any problem with that? Because it sounds like a
3 good solution.

4 LEGAL COUNSEL TOBIAS: Great.

5 BOARD CHAIR MOULTON-PATTERSON: Not putting
6 words in your mouth.

7 BOARD MEMBER JONES: Works for me, Madam Chair.

8 LEGAL COUNSEL TOBIAS: Well certainly the Board
9 can do whatever the Board sees fit.

10 BOARD MEMBER ROBERTI: Oh, not all the time.

11 LEGAL COUNSEL TOBIAS: But I would say --

12 BOARD MEMBER EATON: We proved that yesterday.

13 BOARD MEMBER JONES: We tried.

14 LEGAL COUNSEL TOBIAS: But if this is a
15 stipulated order that's operating under the the regs that
16 the Board recently adopted that deal with emergencies,
17 then I think that it would have to make that finding then
18 that the emergency exists, and I'm not sure that the
19 basis is there for a true emergency in order to waive the
20 terms and conditions of the permit.

21 So, you know, I think that seems like legally, I
22 understand that it meets some practical requirements, but
23 I'm not sure that --

24 BOARD MEMBER EATON: What were the grounds by
25 which the original stipulated order went into effect?

1 MS. KIGER: It was under the emergency
2 regulations to handle a large amount of green material.

3 BOARD MEMBER EATON: Thank you.

4 BOARD MEMBER ROBERTI: Wouldn't that hold for
5 the thirty day problem?

6 BOARD MEMBER JONES: For an extension?

7 BOARD MEMBER ROBERTI: Yeah. If that was the
8 reason, and that's a liberal interpretation of emergency
9 which is fine, it seems like it would hold for the
10 extension.

11 MS. KIGER: Well the extension -- I'm sorry.
12 I'm hearing Mr. Eaton saying that the increase in
13 tonnage, the increase in vehicle counts would be added to
14 the stipulated agreement, is that what I understand?
15 Because the stipulated agreement as it's written right
16 now is only for composting.

17 BOARD MEMBER EATON: We understand that.

18 BOARD MEMBER JONES: Yes.

19 MS. KIGER: And the last turnaround it would
20 take thirty days to issue a new stipulated agreement, so
21 what's the point? I mean we would still be in February.

22 BOARD MEMBER EATON: We wouldn't enter a new
23 one, we would amend the current.

24 MR. DE BIE: Mark De Bie. I would echo legal
25 counsel's opinion that, you know, the first hurdle would

1 be is there a temporary emergency as defined in those, in
2 those regulations, so some direction from the Board on
3 how we could aid the LEA into finding that.

4 I think if it's just amending the stipulated
5 agreement, there is no specific language in the emergency
6 regs that talks about amending stipulated agreements, so
7 we'd be creating something new and different.

8 BOARD MEMBER EATON: No, we'd be correcting an
9 oversight, an inadvertent oversight and to which we
10 should have probably looked at the amendment because I
11 would think that we would want to at some times amend a
12 stipulated agreement, irrespective.

13 But what we're looking here is to find a
14 solution to what everyone agrees is a most unfortunate
15 situation. And you know, just want to keep dotting the
16 I's and crossing the T's, I guess there's not much we can
17 move forward on.

18 MR. DE BIE: I just wanted to add that if the
19 stipulated agreement path is taken I don't think it would
20 take thirty days to do that, it would take much less.

21 MS. WALZ: Madam Chair.

22 BOARD CHAIR MOULTON-PATTERSON: Yes, Ms. Walz.

23 MS. WALZ: The other solution is, of course, if
24 the county were to waive time. Which means they couldn't
25 increase those activities, but they would simply forebear

1 from doing that. And if not to do that it would have to
2 be found to be an emergency, I think, in order to take
3 this step.

4 BOARD CHAIR MOULTON-PATTERSON: Okay. Mr.
5 Jones, and then we might be taking a break.

6 BOARD MEMBER JONES: Madam Chair, I think that
7 if the extension of the waiver which was, the stipulated
8 agreement which was just to deal with compost regs, could
9 be extended. It is an emergency in my mind if we're
10 going to stop 202 vehicles from a wasteshed when it's the
11 only disposal facility in the area from going in and not
12 taking that 450 tons of waste that would end up on the
13 side of the street. I think it was reasonable that they
14 did this.

15 We've got a LEA that's brought the NDFE, it's
16 been approved by the Board of Supervisors, there's a
17 condition in the permit that they cannot do that
18 activity; I think Mr. Eaton's resolution of keep the
19 stipulated agreement in place, extend it if you have to,
20 until this Board approves the NDFE that will be in front
21 of us next month, which will then allow condition T to be
22 implemented. And I think that gets everybody -- okay,
23 Madam Chair.

24 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

25 BOARD MEMBER JONES: I want to move adoption of

1 Resolution 2002-10 revised --

2 MS. KIGER: Can I finish the item?

3 BOARD MEMBER JONES: -- to include instructions
4 to the LEA, if they so desire, to keep, to extend that
5 stipulated agreement on that composting piece, bring the
6 NDFE in front of this Board next month for this, the
7 concurrence, as the Board of Supervisors did yesterday,
8 and then condition T will be resolved.

9 BOARD MEMBER MEDINA: Second.

10 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
11 motion by Mr. Jones to approve Resolution 2002-10 revised
12 with his revisions, seconded by Mr. Medina.

13 Please call the roll.

14 BOARD SECRETARY VILLA: Eaton?

15 BOARD MEMBER EATON: Aye.

16 BOARD SECRETARY VILLA: Jones?

17 BOARD MEMBER JONES: Aye.

18 BOARD SECRETARY VILLA: Medina?

19 BOARD MEMBER MEDINA: Aye.

20 BOARD SECRETARY VILLA: Paparian?

21 BOARD MEMBER PAPARIAN: Abstain.

22 BOARD SECRETARY VILLA: Roberti?

23 BOARD MEMBER ROBERTI: Aye.

24 BOARD SECRETARY VILLA: Moulton-Patterson?

25 BOARD CHAIR MOULTON-PATTERSON: Aye. Okay.

1 We'll move on to --

2 BOARD MEMBER PAPARIAN: Madam Chair, you can go
3 back and record me as aye.

4 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
5 Paparian.

6 We'll move on to item 40.

7 MS. NAUMAN: Madam Chair, item number 40 is
8 consideration of a new full solid waste facility permit
9 for Inland Composting Organic Recycling facility in San
10 Bernardino County.

11 And I believe Dianne Ohiosumua will be making
12 the presentation.

13 MS. OHIOSUMUA: All our remarks of San
14 Bernardino County local enforcement agency will be
15 discussed in agenda item forty today.

16 The proposed permit is to allow the operations
17 of a new mixed solid waste composting facility. Board
18 staff and the LEA has determined that all the
19 requirements for the proposed permit have been met.

20 At this time staff would recommend that the
21 Board adopt permit decision number 2002-11 concurring
22 with the issuance of a solid waste facility permit number
23 36-AA-0384 for the Inland Composting and Organic
24 Recycling facility.

25 In conclusion, the San Bernardino County local

1 enforcement agency is available to answer any questions
2 you may have.

3 That concludes staff's presentation.

4 BOARD CHAIR MOULTON-PATTERSON: Thank you. Any
5 questions.

6 Mr. Jones.

7 BOARD MEMBER JONES: I want to move adoption of
8 Resolution 2002-11, consideration of a new full solid
9 waste facility permit for Inland Composting and Organic
10 Recycling facility in San Bernardino County.

11 BOARD MEMBER MEDINA: Second.

12 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
13 motion by Mr. Jones, seconded by Mr. Medina to approve
14 2002-11 revised.

15 Please call the roll.

16 BOARD SECRETARY VILLA: Eaton?

17 BOARD MEMBER EATON: Aye.

18 BOARD SECRETARY VILLA: Jones?

19 BOARD MEMBER JONES: Aye.

20 BOARD SECRETARY VILLA: Medina?

21 BOARD MEMBER MEDINA: Aye.

22 BOARD SECRETARY VILLA: Papanian?

23 BOARD MEMBER PAPANIAN: Aye.

24 BOARD SECRETARY VILLA: Roberti?

25 BOARD MEMBER ROBERTI: Aye.

1 BOARD SECRETARY VILLA: Moulton-Patterson?

2 BOARD CHAIR MOULTON-PATTERSON: Aye.

3 BOARD MEMBER JONES: Madam Chair.

4 BOARD CHAIR MOULTON-PATTERSON: Yes.

5 BOARD MEMBER JONES: Just one quick thing. Mr.
6 Jim Sullivan who owns this facility has been very helpful
7 to this Board in our work on PR 1133 and the testing.
8 We've tested at his facility. I think he's here
9 somewhere. But I just wanted to thank him for helping us
10 work through this with real data and make the Board
11 members aware of that.

12 BOARD CHAIR MOULTON-PATTERSON: Thank you. I
13 also understand the expansion, they'll be hiring twenty
14 to thirty new employees, so that's good news.

15 Number 41 was pulled. 42, please.

16 MS. NAUMAN: For the Newby Island compost
17 facility in Santa Clara County. Laura Niles will make
18 the presentation.

19 MS. NILES: Good morning, Madam Chair and Board
20 members.

21 The LEA has proposed a permit for Newby Island
22 Compost facility in San Jose. And I think most of you
23 have been to the facility, we're moving 8.3 acres that
24 were at the entrance of the facility, and we're moving
25 'em back to the southwestern portion of the facility to

1 an eighteen acre area.

2 They want to increase the daily tonnage from 210
3 tons per day with an initial phase of 660 tons per day,
4 and with an EA approval up to 980 tons per day, and
5 that's based on the pad size.

6 They want to add mixed solid waste as a
7 feedstock, and that's mainly food waste.

8 Increase the volume of the windrow composting
9 area, and incorporate aerated static pile and in vessel
10 composting.

11 And increase the hours of operation from six to
12 five to four to eight, and that's Monday through
13 Saturday.

14 Yesterday we got a new proposed permit and that
15 has been provided to you as attached one, a copy should
16 have been provided, I think they're coming up now.

17 And the changes in the new permit clarify the
18 tonnages based on the CEQA and how the CEQA was written.
19 And also we're eliminating condition 17-7 which was in
20 error, and it's actually an annual total and not compost
21 on site.

22 We have since had a finding for CEQA that the
23 environmental documents are adequate for staff's review,
24 and all the findings have been completed by Board staff
25 at this time.

1 Staff recommends concurrence in solid waste
2 facility permit 43-AN-0017, and that the Board adopt
3 Resolution number 2002-14.

4 The LEA and the operator are both here, and this
5 concludes Board staff's presentation.

6 BOARD CHAIR MOULTON-PATTERSON: Thank you. We
7 have a speaker, Curt Fujii, Allied Waste.

8 MR. FUJII: Thank you. I'm Curt Fujii, the
9 regional engineer for Allied Waste, the parent company to
10 the Newby Island composting facility.

11 I just wanted to take this opportunity to
12 express publicly our appreciation for the efforts of the
13 LEA and CIWMB staff in bringing this permit to you.
14 There was a lot of hard work and a lot of effort put into
15 this. The regulatory community was very thorough. As a
16 member of the regulated community we truly appreciate
17 that. We appreciate their thoroughness, that's good for
18 our business. We also appreciate the hard work, the
19 time, the effort and the talent that they brought to this
20 item.

21 And so we just want to again thank the LEA,
22 thank your staff, and respectfully urge your approval of
23 the permit.

24 Thank you.

25 BOARD CHAIR MOULTON-PATTERSON: Thank you.

1 BOARD MEMBER JONES: You got one more, Michael
2 Gross.

3 BOARD CHAIR MOULTON-PATTERSON: Oh, okay.
4 Michael Gross. Zanter Road Landfill.

5 MR. GROSS: That was close, Zanker Road
6 Landfill. I just passed out in the handout here, there's
7 three letters, two from the community of Alviso which the
8 BFI composting facility is located in.

9 BOARD CHAIR MOULTON-PATTERSON: Again, please
10 turn off cell phones and pagers. And also we have
11 speaker, I neglected to mention this, there are speaker
12 forms in the back, if you know you want to speak on an
13 item please turn it in to Ms. Villa. Thank you.

14 Continue please.

15 MR. GROSS: There were three letters, there was
16 two letters from people of Alviso, one of the task force
17 members from Alviso, and also a resident that's been in
18 Alviso for 38 years.

19 What we're talking here is notification. The
20 Zanker Road Landfill spent seven years and a lot of money
21 and did several EIR's to currently have what we have at
22 our site now, which is a demolition recycling operation.
23 We're in the northern part of Alviso also.

24 Right now in Alviso there are five landfills,
25 two composting facilities, a sewage treatment plant, and

1 a proposed power station, well they will build it maybe.

2 What we're talking here is environmental justice.

3 San Jose has looked at this issue and they
4 promised the residents of Alviso that no more composting
5 operations would be sited in their facility.

6 The proposed facility, even though it's being
7 moved from one end of the site to the other, is now going
8 to be closer to the community of Alviso.

9 There's cumulative impacts. They have provided,
10 they have, BFI has done very many EIR's, excuse me,
11 negative decs with no EIR's, they're the only landfill in
12 San Jose that's never received an EIR. They're also the
13 largest landfill in San Jose. I really can't understand
14 why an EIR was never done at the city level.

15 There's also two more negative decs pending for
16 the Newby Island landfill; one for a methane gas
17 collection system, and one for a facility located out
18 front for their hauling division. I don't think any of
19 this has really been taken a look at at the, both the
20 city level or actually at the state level.

21 Noticing. There's also a notice there that was
22 provided by our facility when we went through the EIR
23 process to the Alviso residents, both in English and
24 Spanish.

25 Since Alviso is 76 percent Hispanic, it would

1 stand to reason that any noticing that was done, even
2 though it might have been done in the paper, should be
3 also in Spanish, it never was.

4 And last but not least, we also operate
5 municipal solid waste composting facility in Santa Clara
6 County. When we permitted this facility it was mandatory
7 that we actually do all the processing inside of a
8 building and do all, the material would be an in vessel
9 system.

10 What the proposed applicant here is allowing to
11 do is some in vessel and some aerostatic pile. And what
12 we're seeing is a real tremendous disadvantage on our
13 part. We have invested a lot of money and a lot of time
14 and a lot of effort to be one of the first guys out there
15 to start doing food waste recycling. Now we're at a
16 total disadvantage because all they're going to have to
17 do is windrow the material or put it in an aerostatic
18 pile. There's not a real big intention for their part to
19 put it in the in vessel system, which does a cost a lot
20 more money.

21 That's all I have to say. Thank you very much.

22 BOARD CHAIR MOULTON-PATTERSON: And for the
23 Board members, Hilary Gans, General Manager, Newby Island
24 compost facility, is available to respond to questions or
25 issues.

1 Mr. Jones.

2 BOARD MEMBER JONES: Madam Chair, I'm going to
3 move this, but I do want to say that, you know, these are
4 two facilities that compete with each other and have
5 competed with each other for years. And as much as I
6 love Michael Gross and Jessie and all those folks, I
7 think fair is fair.

8 I want to move adoption of Resolution 2002-14
9 revised, for the consideration of a revised solid waste
10 facility permit for the Newby Island compost facility in
11 Santa Clara County.

12 BOARD CHAIR MOULTON-PATTERSON: I'll second.

13 We have a motion by Mr. Jones, seconded by
14 Moulton-Patterson to approve resolution 2002-14 revised.

15 BOARD MEMBER PAPARIAN: Madam Chair, can I ask a
16 couple questions about this?

17 BOARD CHAIR MOULTON-PATTERSON: Yes.

18 BOARD MEMBER PAPARIAN: I wonder, I mean there
19 were several things mentioned by the last speaker and I
20 wonder if our staff wants to respond. There were issues
21 raised about environmental justice, and then in the
22 letters here it suggests that, you know, there's some
23 question about whether an EIR has been done on this
24 operation.

25 I wonder if staff can either clarify or respond

1 to some of those issues?

2 MR. DE BIE: I'm sorry, Mr. Paparian, I was out
3 of the room dealing with a previous item.

4 It's my understanding that CEQA documents were
5 prepared for this particular project, and staff did
6 review all of those documents. In staff's review we look
7 at how the process flowed; whether, you know, noticing
8 was done and responsible agencies were contacted, those
9 sorts of things, as well as the quality of the analysis
10 in that document.

11 And staff did eventually conclude that as the
12 project is now described in the revisions to the permit
13 as well as revisions to the RFI, that there is
14 consistency and that that CEQA process has been complied
15 with.

16 I'm not sure about the questions that were
17 raised about environmental justice, again I was out of
18 the room at the time.

19 BOARD MEMBER PAPARIAN: The speaker said that
20 there are environmental justice concerns, he didn't
21 provide much detail, I don't know if he wants to
22 elaborate on that or not.

23 But are you aware of environmental justice
24 concerns with this facility? We do have letters from a
25 couple of the residents nearby.

1 MR. DE BIE: Staff doesn't have any direct
2 knowledge of issues, environmental justice issues, you
3 know. This is a, currently there is an active landfill
4 recyclry as well as compost facility at the site.

5 This is a, in essence a relocation and expansion
6 of existing operations on the site, already existing
7 operations at the site.

8 If your questions relate to environmental
9 justice and CEQA, there isn't an obligation under the
10 CEQA process to address specific environmental issues.
11 And so in staff's analysis that would not be an issue
12 covered in environmental justice or in the CEQA
13 analysis.

14 BOARD MEMBER PAPARIAN: Have there been odor
15 concerns with the facility and the community.

16 MR. GANS: Hi, my name is Hilary Gans, I'm the
17 general manager of the BFI recycling facility and
18 composting operation.

19 And honorable Board members, if I can respond to
20 our record, we've been operating our facility for five
21 years, have one confirmed odor complaint in that five
22 year history, and have an exemplary record for a
23 composting facility located in our area.

24 As it relates to environmental justice and the
25 City of Alviso, we're not proximate to the City of

1 Alviso, we're three to five miles away. Alviso has not
2 raised a concern about our composting facility, and they
3 have certainly not issued a, no odor complaints have been
4 generated from the City of Alviso.

5 BOARD MEMBER PAPARIAN: And so you're saying the
6 closest residence is two to three miles away?

7 MR. GANS: Alviso resident, yeah. We're
8 actually in the City of Milpitas, we're not proximate to
9 Alviso.

10 BOARD CHAIR MOULTON-PATTERSON: Thank you.

11 BOARD MEMBER PAPARIAN: Thank you.

12 BOARD CHAIR MOULTON-PATTERSON: Please call the
13 roll.

14 BOARD SECRETARY VILLA: Eaton?

15 BOARD MEMBER EATON: Aye.

16 BOARD SECRETARY VILLA: Jones?

17 BOARD MEMBER JONES: Aye.

18 BOARD SECRETARY VILLA: Medina?

19 BOARD MEMBER MEDINA: I'm voting no on this
20 item. And specifically I just received this letter of
21 January 22nd from Mr. Richard Santos of Alviso, and he
22 cites a concern regarding the fact that they were not
23 advised of this, were not contacted regarding this
24 permit.

25 And when you talk about Alviso, that is the

1 classic case of environmental justice. Every facility
2 that could have been sited around Alviso, which is a
3 very, very poor community, I've actually done volunteer
4 work there in the past with the residents of Alviso, so
5 Alviso is a classic case of environmental justice.
6 Everything that could be sited that no one else wanted to
7 be sited in their community was sited around Alviso.

8 For that very fact the residents have organized
9 and have done a lot of work as a active community group,
10 even Cesar Chavez spent some time working with the
11 community of Alviso.

12 So when someone who describes themselves as an
13 Alviso community activist says that he has not, their
14 community has not been informed regarding this permit,
15 then I have to take this letter seriously.

16 And again, this is the only communication that I
17 have had from the City of Alviso, and so I have to vote
18 no in regard to this.

19 BOARD SECRETARY VILLA: Paparian?

20 BOARD MEMBER PAPARIAN: I feel like there's a
21 number of issues that need to be addressed, I'm going to
22 abstain at this time on this.

23 BOARD MEMBER ROBERTI: I'm going to abstain as
24 well until we hear a little bit more about the notice
25 that did not go to Alviso.

1 Madam Chair, I know we're in the middle of roll
2 call, but maybe after this roll call, or we can put it on
3 hold, I can't think of what the word is, on call, maybe
4 somebody can testify to us as to what the --

5 MR. GANS: Madam Chair, would it be appropriate
6 for me to make a statement on this?

7 BOARD CHAIR MOULTON-PATTERSON: Just a minute, I
8 want to ask counsel. We're in the middle of a roll call,
9 do we finish it? Our court reporter, I purposely didn't
10 take a break before this but we are going to have to take
11 one in a moment. But should we finish this roll call
12 vote?

13 LEGAL COUNSEL TOBIAS: I think you should finish
14 the roll call vote.

15 BOARD CHAIR MOULTON-PATTERSON: Okay.

16 BOARD SECRETARY VILLA: Moulton-Patterson.

17 BOARD CHAIR MOULTON-PATTERSON: Aye.

18 BOARD MEMBER ROBERTI: I abstained.

19 BOARD CHAIR MOULTON-PATTERSON: Right. So it
20 doesn't carry, and at this time I'm going to, there might
21 be some --

22 BOARD MEMBER ROBERTI: I guess I'd like to,
23 Madam Chair, open it up to further discussion.

24 BOARD CHAIR MOULTON-PATTERSON: Okay. Why don't
25 we open it up for further discussion.

1 But we will be taking a short break so our court
2 reporter can have a break. Excuse me. Ten minutes.

3 (Thereupon there was a brief recess.)

4 BOARD CHAIR MOULTON-PATTERSON: Ms. Niles.

5 MS. NILES: Yeah, I would like to introduce Bill
6 Shrader, he's the consultant, and he personally did the
7 noticing for the City of Alviso, and I'd like him to
8 explain how that was completed.

9 BOARD CHAIR MOULTON-PATTERSON: Thank you.

10 MR. SHRADER: Good morning, my name is Bill
11 Shrader, I'm the principal for Geothermal Consulting
12 Engineering Company. I provided the noticing and
13 environmental work for this permit.

14 We followed the public noticing policy for
15 communities for the City of San Jose, and exceeded it in
16 the case of Alviso.

17 That public notice required a thousand feet
18 notification of adjacent property owners. We went
19 several miles outside of that. And I stood in the Alviso
20 community library for two days speaking to residents who
21 entered it as well as posting it on the community
22 bulletin board.

23 The notification also included noticing it in
24 local papers, San Jose Mercury News, the local community
25 paper, and noticing was done, completed in English. San

1 Jose Mercury News would not notice in Spanish.

2 Any questions?

3 BOARD CHAIR MOULTON-PATTERSON: Okay.

4 Questions?

5 BOARD MEMBER MEDINA: Yes.

6 BOARD CHAIR MOULTON-PATTERSON: Mr. Medina.

7 BOARD MEMBER MEDINA: Did you place any notices
8 in Spanish language radio or television?

9 UNIDENTIFIED SPEAKER: No, I did not.

10 BOARD MEMBER MEDINA: Spanish language radio is
11 the most used means of communication in the Spanish
12 speaking community, so if you want to get a message out
13 to the Spanish speaking community you should use Spanish
14 speaking radio.

15 MR. SHRADER: I understand. We followed the
16 guidance from the City of San Jose staff.

17 BOARD CHAIR MOULTON-PATTERSON: Thank you.

18 Did you have a question Mr. Paparian or Senator
19 Roberti?

20 BOARD MEMBER ROBERTI: Just an observation. In
21 looking at the map I think that the City of Alviso should
22 have been notified, but it's not a legal requirement
23 because of our skewed notification laws which only
24 require notification within a very limited range, which I
25 hope the legislature at some point will adjust for us

1 because it's a recurring problem, and it's not the fault
2 of the applicant seeker, whatever.

3 So looking at the map, they did try to move this
4 facility from an inhabited area, although not from the
5 City of Alviso, from Milpitas I guess to the south.

6 The issue really in my mind is one of the very
7 limited notification that is required under our laws.

8 I will vote for the, I will vote for the permit
9 after looking at the map, and hoping at some point we
10 bring attention in the legislature that this notification
11 has to be changed, because we give situations where
12 people who should be notified are not.

13 And the facility appears to be still
14 sufficiently far away from Alviso, although I totally
15 appreciate every comment that my colleague has made on
16 this subject.

17 BOARD CHAIR MOULTON-PATTERSON: Did you wish to
18 change your vote, record your vote different?

19 BOARD MEMBER ROBERTI: I will change to an aye,
20 yes.

21 BOARD CHAIR MOULTON-PATTERSON: Okay. Mr.
22 Paparian, did you have a statement?

23 BOARD MEMBER PAPARIAN: Yeah, thank you, Madam
24 Chair. There are a couple of issues that have come up.

25 We've been talking about possible changes to the

1 format of the material we get and the background we get,
2 including some discussion of environmental justice in the
3 future, and I think this is a clear example of why that
4 would be helpful as items come forward.

5 The other issue that came up was the
6 environmental documentation. My understanding is there
7 has not been a full EIR on this facility, but there have
8 been a number of changes over time that have been neg
9 dec'd, is that right?

10 MR. SHRADER: That is accurate.

11 BOARD MEMBER PAPARIAN: Okay. My concern about
12 that is that cumulatively, and I don't know what all
13 those changes were, but cumulatively those changes may
14 have been such that an EIR may have been appropriate, but
15 each individual one was able to get through without a
16 full environmental document.

17 That's something I'd like to explore in the
18 future, not just with this facility but others as well,
19 you know. Are we allowing neg decs to accumulate on
20 facilities when, if you stand back and look from the, you
21 know, from the first neg dec to the current time, whether
22 it would have been really appropriate to do a full
23 environmental review.

24 MR. DE BIE: If I may, Mr. Paparian, when CEQA
25 staff does their review they are concerned about that

1 particular issue on piecemealing of the analysis for
2 various subparts of a larger project. And so I can
3 assure you that when they reviewed this document they
4 clued in on that aspect, that issue.

5 They also take time to look at what's occurring
6 at facilities in and around the area, directly related or
7 not related, to get a sense if there is a cumulative
8 effect here that needs to be focused on better in a
9 document.

10 And in this particular case staff wasn't, did
11 not make a finding that, you know, the cumulative effect
12 of multiple projects occurring over time was an issue.

13 BOARD MEMBER PAPARIAN: Okay. And then in terms
14 of, let me just ask legal counsel.

15 In terms of changing our votes at this point, do
16 we need to revote on this thing or --

17 LEGAL COUNSEL TOBIAS: Well I think it might be
18 better just to remake the motion and do it. I think it's
19 six of one, half dozen of another, but if several people
20 are changing their votes, you know, for the record it
21 might just be, you know, for the record just be better.

22 BOARD MEMBER EATON: I said I think that the
23 proper way in the Rules of Order is to rescind the
24 previous action and to take a revote.

25 LEGAL COUNSEL TOBIAS: You could do that too.

1 BOARD MEMBER JONES: Madam Chair.

2 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

3 BOARD MEMBER JONES: I'd like to, since I made
4 the motion, I'll rescind the last vote and make a motion.
5 So I want to rescind the last one.

6 LEGAL COUNSEL TOBIAS: That needs a second.

7 BOARD MEMBER EATON: I'll second that, I guess.

8 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
9 motion by Mr. Jones, seconded by Mr. Eaton to rescind the
10 previous vote on 2002-14 revised.

11 Please call the roll.

12 BOARD SECRETARY VILLA: Eaton?

13 BOARD MEMBER EATON: Aye.

14 BOARD SECRETARY VILLA: Jones?

15 BOARD MEMBER JONES: Aye.

16 BOARD SECRETARY VILLA: Medina?

17 BOARD MEMBER MEDINA: Aye.

18 BOARD SECRETARY VILLA: Paparian?

19 BOARD MEMBER PAPARIAN: Aye.

20 BOARD SECRETARY VILLA: Roberti?

21 BOARD MEMBER ROBERTI: Aye.

22 BOARD SECRETARY VILLA: Moulton-Patterson?

23 BOARD CHAIR MOULTON-PATTERSON: Aye.

24 BOARD MEMBER JONES: Madam Chair.

25 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

1 BOARD MEMBER JONES: I'd like to move adoption
2 of resolution 2002-14, consideration of a revised solid
3 waste facility permit for the Newby Island compost
4 facility in Santa Clara County.

5 BOARD CHAIR MOULTON-PATTERSON: I'll second
6 again.

7 So we have a motion by Mr. Jones, seconded by
8 Moulton-Patterson to approve Resolution 2002-14 revised.

9 Please call the roll.

10 BOARD SECRETARY VILLA: Eaton?

11 BOARD MEMBER EATON: Aye.

12 BOARD SECRETARY VILLA: Jones?

13 BOARD MEMBER JONES: Aye.

14 BOARD SECRETARY VILLA: Medina?

15 BOARD MEMBER MEDINA: No.

16 BOARD SECRETARY VILLA: Paparian?

17 BOARD MEMBER PAPARIAN: Aye.

18 BOARD SECRETARY VILLA: Roberti?

19 BOARD MEMBER ROBERTI: Aye.

20 BOARD SECRETARY VILLA: Moulton-Patterson?

21 BOARD CHAIR MOULTON-PATTERSON: Aye.

22 Okay. We're going to be moving on to item 43.

23 One thing I neglected to say at the beginning of the
24 meeting we had yesterday on item 25, we had talked of
25 trailing it, there were a lot of unanswered questions, so

1 I'd like to mention to Ms. Broddrick that we would like
2 you to bring forth a new item for the February meeting.
3 And this is regarding school gardens. And I'm sorry I
4 neglected to mention that at the beginning of the
5 meeting.

6 Okay. This brings us to item 43.

7 MS. NAUMAN: Item 43 is consideration of a
8 standardized composting permit for Wood Industries
9 Company in Tulare County.

10 Keith Kennedy will make the presentation.

11 MR. KENNEDY: Good morning, Madam Chair and
12 Board members.

13 The Wood Industries Company began operation in
14 1998 with a registration solid waste facility permit.
15 During the past several years this private facility has
16 changed and expanded operations and is now applying for a
17 standardized solid waste facility permit.

18 The proposed standardized permit would allow for
19 the following four major changes:

20 An increase in acreage from 25 to 35 acres.

21 An increase in composting capacity from 10,000
22 to 116,000 cubic yards.

23 An increase in incoming feedstock from 150 to
24 four hundred tons per day.

25 And finally, an increase in the incoming

1 vehicular traffic from 50 to 62 vehicles per day.

2 The company is asking for these changes in order
3 to meet the increasing volume of green and wood waste
4 being collected in Tulare County due to AB 939.

5 There have been no violations of state minimum
6 standards over the past twelve months at the Wood
7 Industries Company.

8 Board staff have determined that all the
9 requirements of the standardized permit have been
10 fulfilled.

11 In conclusion, staff recommends that the Board
12 adopt Board Resolution number 2002-16 concurring with the
13 issuance of solid waste facility permit number
14 54-AA-0028.

15 This concludes staff's presentation. Joe
16 Reisdorf, the consultant for Wood Industries Company, and
17 Keith Yonkee, the LEA for Tulare County are available for
18 questions, and I'll be happy to answer any questions
19 also.

20 BOARD CHAIR MOULTON-PATTERSON: Thank you for
21 your presentation.

22 Any questions? Mr. Jones.

23 BOARD MEMBER JONES: Madam Chair, I'd like to
24 move adoption of Resolution 2002-16 for a standardized
25 composting permit for Wood Industries Company in Tulare

1 County.

2 BOARD MEMBER MEDINA: Second.

3 BOARD CHAIR MOULTON-PATTERSON: Motion by Mr.

4 Jones, seconded by Mr. Medina to approve 2002-16.

5 Please call the roll.

6 BOARD SECRETARY VILLA: Eaton?

7 BOARD MEMBER EATON: Aye.

8 BOARD SECRETARY VILLA: Jones?

9 BOARD MEMBER JONES: Aye.

10 BOARD SECRETARY VILLA: Medina?

11 BOARD MEMBER MEDINA: Aye.

12 BOARD SECRETARY VILLA: Paparian?

13 BOARD MEMBER PAPARIAN: Aye.

14 BOARD SECRETARY VILLA: Roberti?

15 BOARD MEMBER ROBERTI: Aye.

16 BOARD SECRETARY VILLA: Moulton-Patterson?

17 BOARD CHAIR MOULTON-PATTERSON: Aye. Number

18 44, please.

19 MS. NAUMAN: Item 44 is consideration of
20 approval of the proposed revised scoring criteria and
21 evaluation process for fiscal year 2001-02 for the Farm
22 and Ranch Solid Waste Cleanup and Abatement Grant
23 Program.

24 Before I turn this over to Wes Mindermann to
25 make the detailed presentation, I just want to take a

1 moment to acknowledge the discussion that we had
2 yesterday on another, on a grant program with respect to
3 the north south split.

4 We've been waiting for some time to bring this
5 item forward to the Board, and waited until you had your
6 discussion in November at which time you firmed up your
7 policy direction on a number of aspects related to grant
8 programs, including the direction to work closely with
9 the grants administration unit, which we have done in
10 this case.

11 So we're bringing this forward now. And at
12 issue in this particular program is the whole question of
13 north south split.

14 This is a program that, through the legislative
15 mandate focuses on rural jurisdictions, unlike the
16 program yesterday you're looking at which was rural and
17 underserved, this one is specifically rural.

18 This is still a relatively new program. We have
19 struggled with this program. It is, continues to be
20 undersubscribed. In our report to the legislature we
21 pointed out several barriers that we see as impediments
22 to the effective implementation of the program.

23 And as I said, it continues to be
24 undersubscribed. To date it looks like about
25 approximately 20 percent, and Wes can give you the final

1 figures, about 20 percent of the money appears to be
2 going to jurisdictions within Southern California.

3 So we're --

4 BOARD MEMBER ROBERTI: What's the percent there?

5 MS. NAUMAN: I think it's -- Wes, is it 21?

6 MR. MINDERMAN: Right now it's about 20
7 percent.

8 MS. NAUMAN: Twenty percent, okay.

9 So we have realized that this is a difficult
10 program to engender a lot of interest in. Through the
11 leadership of member Paparian and the assistance of the
12 External Affairs Office, we have engaged in a very
13 aggressive marketing effort to get the word out on this
14 program.

15 So as you listen to the presentation today and
16 discuss this among yourselves and with us, please bear in
17 mind the efforts that we're trying to make, short of
18 prescribing the split, which as you see in the item we
19 had not recommended that we go with the 61-39 split;
20 that's certainly still an option, but we think there may
21 be some other more direct, perhaps even more effective
22 ways to reach the communities that really need the
23 assistance of this program.

24 So with that I'll turn it over to Wes.

25 BOARD MEMBER ROBERTI: Madam Chair.

1 BOARD CHAIR MOULTON-PATTERSON: Senator Roberti.

2 BOARD MEMBER ROBERTI: Since I raised the point
3 last, yesterday, I recognize on this one, the farm and
4 ranch, it's very tough to make that a Southern California
5 oriented program. The ranches are going and the people
6 are coming in which is the main reason why --

7 BOARD CHAIR MOULTON-PATTERSON: We do understand
8 that.

9 BOARD MEMBER ROBERTI: Yeah, we understand that.
10 But to the extent that you work hard to try, that's
11 appreciated.

12 BOARD CHAIR MOULTON-PATTERSON: Thank you.

13 BOARD MEMBER EATON: If I just may add on this
14 program, because this is, I believe, Senator Lockyear's
15 bill at the time. The real issue with this program,
16 without getting into north, south, whatever, because
17 there still are a lot of rural communities in that
18 Southern California region, although they are becoming
19 less and less, is that this program still has to go
20 through for the county application, is that correct?

21 MS. NAUMAN: It does.

22 BOARD MEMBER EATON: So the real key here is the
23 statutory obligation, you know, where we can get others
24 to come forward and apply. A site that would qualify has
25 to go through and get sponsorship, in essence, from a

1 city or county.

2 MS. NAUMAN: City or the county.

3 BOARD MEMBER EATON: And so, as we know the
4 group that would be involved in agrarian activities is
5 not necessarily one that's trustful of government to
6 begin with, and so that really, the statutory change
7 would, I think, help, and I'm not trying to get into a
8 north south, but I think that would help both, and I
9 think that's really the key still to this day, isn't it,
10 with all of the program as a whole.

11 MS. NAUMAN: I would agree.

12 BOARD CHAIR MOULTON-PATTERSON: Thank you.

13 MR. MINDERMAN: Thank you, Madam Chair and
14 members of the Board.

15 The Farm and Ranch Solid Waste Cleanup and
16 Abatement Grant program is used to clean up the illegal
17 dumping on agricultural properties where the owner is not
18 responsible for the dumping.

19 The program is also one component of the Board's
20 strategic plan to address illegal dumping, and to protect
21 public health and safety and the environment.

22 As background, for this fiscal year the Board
23 has awarded \$80,000 in grants. The program has been and
24 we anticipate it will remain underutilized through at
25 least this fiscal year.

1 We have identified what we feel are legislative,
2 outreach, and administrative hurdles which program staff
3 are working hard to overcome. This item will address and
4 simplify some of the administrative hurdles to the
5 program.

6 The proposed scoring criteria are presented as
7 attachment one of the agenda item. The criteria were
8 developed to comply with the program statute,
9 regulations, and the Board's direction on grant policy
10 from its November, 2001 meeting.

11 The previous scoring criteria is presented as
12 attachment two of the agenda item for your review.

13 The proposed criteria have been revised to
14 include one hundred possible points under the general
15 grant scoring criteria of need, objectives, evaluation,
16 methodology, budget, and other factors.

17 As directed by the Board, evidence of a green
18 procurement policy is fifteen percent of the total points
19 to determine eligibility.

20 Applications will be accepted on a continuous
21 basis. Complete applications are reviewed and scored
22 using the Board approved criteria.

23 A minimum of fifteen -- excuse me, 50 points out
24 of a hundred are required to be eligible for grant
25 funding under the proposed criteria. Tied scores will be

1 brought to the Board at the time of award for Board
2 consideration.

3 Applications and agreements will contain the
4 Board's required environmental justice certification and
5 provision respectively.

6 Two other issues that need addressing are award
7 to Native American tribes and the geographic distribution
8 of funding requirement.

9 With respect to Indian tribes, we feel that this
10 is primarily a legislative hurdle. Statute is specific
11 in that grants are available only to cities and counties,
12 tribes cannot apply directly, but may apply through the
13 appropriate city or county. Board staff have identified
14 this hurdle and are aware of the Board's concerns in this
15 area, and are working hard to resolve this issue.

16 Regarding geographic distribution of funds. As
17 ms. Nauman had stated earlier, approximately 20 percent
18 of the funds now are awarded to entities in Southern
19 California. We're aware of the Board's concerns in this
20 area and have worked hard to do outreach in Southern
21 California.

22 Right now the Board has awarded grants to
23 Southern California jurisdictions in the City of Fontana,
24 Imperial County, San Bernardino County, Los Angeles
25 County, Riverside County, and under the next item the

1 Board will be considering award of a grant to the town of
2 Yucca Valley.

3 Because the statute is fairly specific and we
4 feel the program is targeted towards the cleanup of farm
5 and ranch properties in rural areas, staff feel that
6 because the fundamental purpose of this program is to
7 clean up those rural areas, that the geographic
8 distribution of funds would not be appropriate in this
9 case at this time.

10 Staff are recommending that the Board adopt
11 Resolution number 2002-17 accepting staff's proposed
12 scoring criteria and evaluation process for the Farm and
13 Ranch Cleanup Program.

14 That concludes my presentation, and I'll be
15 happy to answer any questions.

16 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
17 Mindermann.

18 Mr. Medina.

19 BOARD MEMBER MEDINA: Yes, I wonder if you would
20 tell me the largest grant that we've made under this
21 program, dollar amount?

22 MR. MINDERMAN: Grants are statutorily limited
23 to a maximum of \$50,000 per jurisdiction per year. And
24 we have made several \$50,000 grant awards.

25 BOARD MEMBER MEDINA: And a follow-up to that,

1 on page 44-3E at the very top of that page where you say
2 that, "Demonstration that the project is cost effective.
3 Preference will be given to applicants who use cost
4 savings such as use of volunteer labor."

5 I would advise that you just drop the words
6 volunteer labor out of that, and the reason being that
7 that's just a red flag for organized labor, labor
8 donated, volunteer labor.

9 MR. MINDERMAN: Right. Mr. Medina, I
10 understand your concern.

11 BOARD MEMBER MEDINA: That could be taken into
12 consideration.

13 MR. MINDERMAN: Right. I understand your
14 concern in this area, however this is a quotation of
15 regulation, and so any change in the regulation would
16 require us to enter into the rulemaking process.

17 If that's your direction, you know, at some
18 point in the future if we undertake rulemaking we could
19 consider that change and put it forward through the
20 entire process.

21 BOARD MEMBER MEDINA: And I would recommend
22 that.

23 MR. MINDERMAN: Okay. We'll make a note of
24 that.

25 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank

1 you.

2 MR. MINDERMAN: Thank you.

3 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

4 BOARD MEMBER JONES: Madam Chair, just, I
5 understand where Mr. Medina on this volunteer labor, but
6 I, it seems to me that when we were going through this I
7 think that some of the jurisdictions had asked or some of
8 the, it seemed to me that it was, they had local groups
9 that were going out and cleaning stuff up that were
10 cleaning roadways and stuff like adopt a highway, because
11 this is roadside trash. And if we take away that, are
12 they then precluded from cleaning up the side of the
13 highway? I mean I understand what Mr. Medina is saying,
14 but I remember when we --

15 BOARD MEMBER MEDINA: I would not say that
16 they're precluded, but I have had this issue come up in
17 similar situations before.

18 BOARD CHAIR MOULTON-PATTERSON: We can take a
19 look at it.

20 BOARD MEMBER JONES: We can talk about it.
21 Because I don't think that, I remember when we were
22 putting this together, and it seemed to me that it was a
23 request that it be able to take care of that because they
24 wanted the bonus of getting the dollars.

25 BOARD CHAIR MOULTON-PATTERSON: Okay. We will

1 look into it.

2 Did you have any other questions? Because I
3 think the motion is coming.

4 Mr. Paparian.

5 BOARD MEMBER PAPARIAN: I'll just say, I wanted
6 to thank the staff for their good work in putting
7 together some marketing plans and ideas for this, and
8 hopefully we will be able to get much more interest in
9 the future as a result of that.

10 BOARD CHAIR MOULTON-PATTERSON: Thank you for
11 your participation also.

12 BOARD MEMBER JONES: Madam Chair.

13 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

14 BOARD MEMBER JONES: I'll move adoption of
15 Resolution 2002-17, consideration of approval of the
16 proposed revised scoring criteria and evaluation process
17 for fiscal year 2001-2 Farm and Ranch Solid Waste Cleanup
18 and Abatement Grant Program.

19 BOARD MEMBER MEDINA: Second.

20 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
21 motion by Mr. Jones, seconded by Mr. Medina to approve
22 Resolution 2002-17.

23 Please call the roll.

24 BOARD SECRETARY VILLA: Eaton?

25 BOARD MEMBER EATON: Aye.

1 BOARD SECRETARY VILLA: Jones?

2 BOARD MEMBER JONES: Aye.

3 BOARD SECRETARY VILLA: Medina?

4 BOARD MEMBER MEDINA: Aye.

5 BOARD SECRETARY VILLA: Paparian?

6 BOARD MEMBER PAPARIAN: Aye.

7 BOARD SECRETARY VILLA: Roberti?

8 BOARD MEMBER ROBERTI: Aye.

9 BOARD SECRETARY VILLA: Moulton-Patterson?

10 BOARD CHAIR MOULTON-PATTERSON: Aye. Item 45.

11 MS. NAUMAN: Item 45 is consideration of award
12 of grants for the Farm and Ranch Solid Waste Cleanup and
13 Abatement Grant Program.

14 Wesley Mindermann will make the presentation.

15 MR. MINDERMANN: Thank you. Just in the
16 interest of time I'll just refer to my previous
17 presentation on the background of the farm and ranch
18 cleanup program.

19 This item requests that the Board consider an
20 award of a grant to the town of Yucca Valley for the
21 cleanup of one site in the amount of \$10,000.

22 The grant application has been reviewed and
23 scored, it's eligible for funding.

24 BOARD MEMBER JONES: Madam Chair.

25 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.

1 Mindermann.

2 Mr. Jones.

3 BOARD MEMBER JONES: I'd like to move adoption
4 of Resolution 2002-18, consideration of award of grants
5 for the Farm and Ranch Solid Waste Cleanup and Abatement
6 Grant Program.

7 BOARD MEMBER MEDINA: Second.

8 BOARD CHAIR MOULTON-PATTERSON: Motion by Mr.
9 Jones, seconded by Mr. Medina to approve Resolution
10 2002-18.

11 Please call the roll.

12 BOARD SECRETARY VILLA: Eaton?

13 BOARD MEMBER EATON: Aye.

14 BOARD SECRETARY VILLA: Jones?

15 BOARD MEMBER JONES: Aye.

16 BOARD SECRETARY VILLA: Medina?

17 BOARD MEMBER MEDINA: Aye.

18 BOARD SECRETARY VILLA: Paparian?

19 BOARD MEMBER PAPARIAN: Aye.

20 BOARD SECRETARY VILLA: Roberti?

21 BOARD MEMBER ROBERTI: Aye.

22 BOARD SECRETARY VILLA: Moulton-Patterson?

23 BOARD CHAIR MOULTON-PATTERSON: Aye. Item 46
24 was on consent, already approved.

25 47.

1 MS. NAUMAN: Madam Chair, item 47 involves a
2 number of jurisdictions who were intending to address the
3 Board today and I'm still waiting for one of the
4 jurisdiction's representative to arrive.

5 If the Board would not mind, if we could skip
6 that item now and move either back to item number two,
7 the C&D regs, or item 48.

8 BOARD CHAIR MOULTON-PATTERSON: Let's go to 48.

9 BOARD MEMBER JONES: Yes, please. Thank you.
10 Thanks, Madam Chair.

11 MS. NAUMAN: Knowing that you might like to have
12 lunch sometime today.

13 Item 48 is consideration of approval to formally
14 notice proposed regulations for a waiver of permit terms
15 and conditions during temporary emergencies.

16 And Erica Weber will make the presentation.

17 MS. WEBER: Good morning, Madam Chair and Board
18 members. I'd like to give you a little bit of background
19 information about this.

20 During the August, 2001 Board meeting, the Board
21 adopted the emergency regulations. They were
22 subsequently filed with the Office of Administrative Law
23 and became effective November 1st, 2001. The emergency
24 regulations are now valid until March 2nd, 2002, at which
25 time the Board must decide to either adopt the permanent

1 regulations or to extend the expiration date.

2 This item proposes permanent regulations for 45
3 day public notice. The staff prepared draft language and
4 held a publicly noticed workshop on December 14th, 2001,
5 during which all aspects of the proposed regulations were
6 discussed with attendees. The attached proposed language
7 reflects the outcome of the workshop discussions.

8 Based on the input received, staff have not
9 proposed any significant changes to the existing
10 emergency regulations. LEAs have requested we delete the
11 requirements of Executive Director review of stipulated
12 agreements. The issue of executive director review was
13 fully discussed, and staff believe that the review, as
14 contained in the proposed regulations, is consistent with
15 existing regulations relative to emergency waivers, and
16 also consistent with the intent of Board review for
17 changes, for changes that require permit revisions.

18 The issue relative to possible restrictions for
19 the LEA to allow changes through a notice and order was
20 discussed. The discussions focused on possible
21 modifications to Section 18304, notice and orders, that
22 would allow only the issuance of a cease and desist order
23 for situations that did not qualify for a stipulated
24 agreement. Based on input received, staff will not
25 pursue resolution of this issue through these proposed

1 regulations.

2 At the briefing we heard testimony relative to
3 appeals and stipulated agreements. Staff find that the
4 parts of the regulations cited are the same as these in
5 the emergency regulations and have not been modified.

6 Unless you have any questions I will not be
7 reviewing the proposed changes as we believe they're
8 insignificant.

9 Staff recommends the Board direct staff to begin
10 the 45 day public review and comment period without
11 revisions to the proposed regulations.

12 This concludes staff's presentation.

13 BOARD CHAIR MOULTON-PATTERSON: Thank you for
14 your presentation. Any questions before we go to the
15 speaker?

16 Denise Delmatier, NorCal Waste Systems.

17 MS. DELMATIER: Madam Chair, members of the
18 Board, Denise Delmatier with NorCal Waste Systems.

19 As many of the Board members are aware, we have
20 participated in the discussions and negotiations on the
21 proposed emergency regs as well as these regulations for
22 some time, have participated in numerous workshops on the
23 same subject matter.

24 So my testimony reflects, I think, a consistent
25 position from the solid waste industry in that the

1 concept of a stipulated agreement is an enforceable
2 matter and not an enforcement action. And therefore, as
3 an enforceable matter it is not appealable to the Board.
4 And the reference to a stipulated agreement is to be
5 appealed to the Board or appealable to the Board is
6 inconsistent with the discussions that we have entered
7 into with the Board staff.

8 So we would urge the removal of the reference to
9 the stipulated agreement can be appealed to the Board or
10 to the hearing panel, and would urge its removal.

11 BOARD CHAIR MOULTON-PATTERSON: Thank you.

12 MS. DELMATIER: I'd be happy to answer any
13 questions.

14 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

15 BOARD MEMBER PAPARIAN: Are there other speakers
16 or is that it?

17 BOARD CHAIR MOULTON-PATTERSON: No, that's it.

18 BOARD MEMBER PAPARIAN: I mean just, I'll speak
19 just to that point on the appeals process. I mean that
20 is something that was in the original version of this,
21 and actually I grabbed the transcript from back in August
22 where we actually discussed that issue in the full Board,
23 and I know Mr. Jones and I both agreed that it had a
24 place here, and I think Ms. Tobias actually suggested
25 that it was appropriate from a legal standpoint to have

1 the appeal in there. So I argue for keeping it in.

2 BOARD CHAIR MOULTON-PATTERSON: Okay. We have
3 one late speaker, Evan Edgar, and then I'll turn it back
4 to you, Mr. Paparian.

5 MR. EDGAR: Good morning, Madam Chair and Board
6 members. My name is Evan Edgar of Edgar Associates on
7 behalf of the California Refuse Removal Council. We will
8 support NorCal's comments.

9 On the way over there's a letter from the solid
10 waste industry group that is coming in late as well, but
11 on behalf of the solid waste industry group that includes
12 Waste Management, Allied, and NorCal, we would support
13 NorCal's comments of removing that.

14 Thank you.

15 BOARD CHAIR MOULTON-PATTERSON: Thank you. Did
16 you wish to make a motion, Mr. Paparian?

17 BOARD MEMBER PAPARIAN: I just wanted to, you
18 know, thank the staff for their good work and hard work
19 on this. And I certainly appreciate having had the
20 opportunity to work with Mr. Jones on this, on the
21 development of this.

22 I don't think we need a motion, I think it's
23 just going out for 45 days.

24 BOARD CHAIR MOULTON-PATTERSON: Okay.

25 MS. NAUMAN: Yes, we're just looking for your

1 direction.

2 BOARD CHAIR MOULTON-PATTERSON: We don't need to
3 vote on it, okay.

4 BOARD MEMBER JONES: Madam Chair.

5 BOARD CHAIR MOULTON-PATTERSON: Yes, Mr. Jones.

6 BOARD MEMBER JONES: Just really quickly, I'd
7 like to also thank staff and all the stakeholders who
8 worked through this. To tie it to the statute that
9 enables us to do this is critical and actually moves my
10 thinking, you know, to agree with my fellow Board member.

11 And I want to thank Mr. Paparian for his
12 activity and Heidi, because we did have an awful lot of
13 tough issues to work through, and they got worked through
14 in a way that enables us to do things like we did today
15 in San Luis Obispo. So thank you.

16 BOARD CHAIR MOULTON-PATTERSON: Okay. So we
17 will go out for our 45 day public comment period. Thank
18 you.

19 49.

20 MS. NAUMAN: Item 49 is consideration of
21 approval to formally notice proposed regulations for the
22 inventory of solid waste facilities which violate state
23 minimum standards.

24 Leslee Newton-Reed will make the presentation.

25 MS. NEWTON-REED: Good morning, Madam Chair and

1 Board members.

2 At the November, 2000, Board meeting, Board
3 directed staff to hold workshops and prepare a definition
4 for a compliance schedule and regulations for the
5 inventory.

6 On April 25th, 2001, staff reported back to the
7 Board on the results of the 2001 -- excuse me, March,
8 2001 workshops as part of the semiannual update on the
9 inventory. The Board then directed staff to develop
10 regulations for the inventory process.

11 Proposed regulations were written detailing the
12 process that is currently in use. Comments from the
13 March and November, 2001 workshops were utilized.

14 The following key points summarize the inventory
15 process:

16 First, a notice of intent letter will be written
17 by Board staff if the same violation is reported on two
18 consecutive LEA monthly inspection reports for a
19 facility.

20 If the operator of a facility has corrected the
21 violation within the ninety day notice of intent period,
22 then a rescission letter will be issued from the Board
23 informing the operator that the facility will not be
24 placed on the inventory.

25 However, if the operator has not corrected the

1 violation, then an inclusion letter will be issued from
2 the Board to inform the operator that the facility has
3 been placed on the inventory.

4 After the inclusion letter has been issued, the
5 enforcement agency must prepare a compliance schedule
6 with the operator documenting a timeframe when a facility
7 will cease to be in violation.

8 Finally, when a listed facility is no longer in
9 violation, a removal letter will be sent to the operator
10 by the Board.

11 Only one issue lingers. There was some comment
12 at the workshops regarding extending the timeframe for
13 issuing the compliance schedule for inclusion on the
14 inventory.

15 The original proposed regulations contained
16 fifteen days, and several workshop attendees,
17 particularly Ernie Genter, the LEA for Lassen County,
18 wanted that changed to thirty days. A compromise of
19 fifteen business days is now present in the proposed
20 regulations.

21 Staff recommends that the Board direct staff to
22 formally notice the proposed inventory regulations for 45
23 days, beginning the formal comment period.

24 This concludes my presentation.

25 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

1 BOARD MEMBER JONES: Thanks, Madam Chair.

2 I have a question on, I like the idea of the
3 fifteen working days, that gives people three weeks to
4 work out a thing, that's better than fifteen calendar
5 days.

6 We had an issue in, at the South Coast when we
7 were in Diamond Bar where an LEA had put a condition on a
8 facility that, in fact, was no longer in violation, but
9 the LEA wanted them to maintain that for three months and
10 wanted us to keep it included on the chronic violator
11 list when, in fact, they were no longer in violation.

12 This seems very clear to me that if you are not
13 in violation you are not on the list because you're going
14 to notify them that they had ninety days or whatever to
15 come into compliance, and when they came into compliance
16 they would be removed.

17 So do I understand that an LEA can't just write
18 a plan, the person gets into compliance by not having a
19 violation, they're not allowed to add on three or four
20 more months onto the chronic violator list as a condition
21 of that notice and order because, in fact, the operator
22 is in compliance with the law?

23 MR. DE BIE: Mark De Bie with Permitting and
24 Inspection.

25 Yes, I asked staff to look at that issue because

1 this version of the regs were being drafted as we were
2 dealing with that issue. And we believe that the way the
3 regulations are drafted currently it's very clear that
4 it's Board staff making a determination of compliance
5 based on LEA documentation, either in the inspection
6 report or separately if the LEA chooses to speed it up by
7 sending a letter or whatever.

8 But we will look on inspection reports and
9 determine if the facility is being noted to be in
10 compliance. If they are, then we will rescind the letter
11 and take them off the list.

12 BOARD MEMBER JONES: Madam Chair, I think that
13 was important because of that issue. That was a cloudy
14 issue, we didn't know. So I appreciate that these will
15 take care of that.

16 BOARD CHAIR MOULTON-PATTERSON: Thank you. And
17 we do have a speaker, Mike Schmaeling.

18 BOARD CHAIR MOULTON-PATTERSON: Oh, I'm sorry,
19 Mike, would you like to speak while he's coming up --

20 BOARD MEMBER PAPARIAN: I'll wait.

21 BOARD CHAIR MOULTON-PATTERSON: -- or you want
22 to wait?

23 BOARD MEMBER PAPARIAN: I'll wait.

24 BOARD CHAIR MOULTON-PATTERSON: Okay, sorry.

25 MR. SCHMAELING: Thank you. Mike Schmaeling

1 representing the LEA's EAC chair.

2 I want to thank Board staff for working so
3 diligently in through the work groups. This was quite a
4 chore. The Board staff worked very well with the LEAs,
5 and we're very, we've made a good compromise, we're
6 satisfied. I know Ernie has said, okay, I'll live with
7 the fifteen working days. Everybody else is pretty much
8 in concurrence.

9 Thank you very much.

10 BOARD CHAIR MOULTON-PATTERSON: Thank you for
11 coming and saying that.

12 Mr. Paparian.

13 BOARD MEMBER PAPARIAN: Yeah, Madam Chair. The
14 one concern I had in reading through this and that I
15 wanted to raise, and maybe legal counsel could help me
16 address this.

17 The section, the very last session, 18368 on
18 penalties, suggests a penalty whereby a permit could be
19 revoked if they're not in compliance with the schedule.
20 That's the only reference in here to penalties.

21 My concern is that there are other tools that an
22 LEA has, they could, in association with publication on
23 this list or association with violation of state minimum
24 standards, issue fines or penalties against a facility.

25 My concern would be if we just list this one

1 penalty under the penalty provision in here, an argument
2 could be made that that's the only penalty possible with
3 regards to listing on the state minimum standards
4 inventory.

5 LEGAL COUNSEL TOBIAS: Well I might let Mark
6 respond first just because they've been working with the
7 regs, and then I can certainly jump in after that.

8 MR. DE BIE: The only reason why we highlighted
9 that particular penalty is because it's expressly stated
10 in statute associated with the inventory process.

11 And it should not be viewed that only because
12 that particular penalty is noted that's the only option
13 available. There's a full expectation that the LEA would
14 follow their enforcement program plan to gain compliance
15 at the facility, and use the whole suite of enforcement
16 tools available to them, including notice and orders and
17 penalties associated with that that are outlined in other
18 regulations.

19 The only reason why we highlighted that
20 particular penalty, again, was it was expressly included
21 in the statute as associated with the inventory process.

22 LEGAL COUNSEL TOBIAS: I do agree, Mr. Paparian,
23 that it does sound like it's more susceptible to that
24 interpretation at first blush, that it does sound like
25 that's kind of the only one they have.

1 We can either add to that to say, you know, in
2 addition to the other remedies contained in statute, if
3 you wanted to make that more clear. We could add in
4 examples, such as, and add the other tools that we have
5 in there.

6 I do agree with what Mark said is that this is
7 the one called out specifically in this one. So I think
8 since the Board is sending this out it's certainly
9 something that we could add in if that makes it more
10 clear. They certainly have those other remedies.

11 BOARD MEMBER PAPARIAN: Yeah, and it's important
12 -- yeah, I think the way you said it at first would make
13 me comfortable. In addition to the other enforcement
14 provisions in statute.

15 LEGAL COUNSEL TOBIAS: Contained in statute.

16 MR. DE BIE: If I may, I think to make it real
17 simple is there already a reference to 18307, we could
18 add in a reference to the existing regs that identify
19 other enforcement tools available, notice and order.
20 18304 is one that comes to mind. So we could just add to
21 that list.

22 LEGAL COUNSEL TOBIAS: Actually I like that
23 better.

24 BOARD CHAIR MOULTON-PATTERSON: Is that okay,
25 Mr. Paparian?

1 BOARD MEMBER PAPARIAN: As long as it gets done
2 properly, yes, thank you.

3 BOARD CHAIR MOULTON-PATTERSON: Okay, then. So
4 I think the Board is comfortable with noticing these for
5 the 45 day comment period, and that brings us to number
6 50.

7 MS. NAUMAN: Item 50 is consideration of
8 approval to notice a fifteen day public comment period
9 for revisions -- actually Madam Chair, if the Board would
10 indulge us again, this item is probably going to take
11 some time, and there is another issue that legal counsel
12 and I are still talking about on this, so if you don't
13 mind we could move to 51 and 52 which are very quick
14 items.

15 BOARD CHAIR MOULTON-PATTERSON: Okay. Let's
16 move to those and then we'll take our lunch break.

17 MS. NAUMAN: Thank you. Item 51 is
18 consideration of adoption of regulations for the process
19 of Board withdrawal of its approval of local enforcement
20 agency designations.

21 Gabe Aboushanab will make that presentation.

22 MR. ABOUSHANAB: Good morning, Madam Chair and
23 Board members. Again, Gabe Aboushanab of the LEA program
24 assistance and evaluation section.

25 Briefly as a background. The proposed

1 regulations codify an existing framework and the process
2 for Board action of LEAs includes partial decertification
3 and full decertification in addition to withdrawal of an
4 LEA designation approval.

5 And the proposed regulations also identify the
6 process for local governing body which elects to withdraw
7 its current LEA designation.

8 Now, previously in March of 2001 staff presented
9 a discussion item regarding these regulations, and
10 subsequently in April, 2001 staff presented the
11 regulations in an agenda item to the Board at which time
12 approval was given to begin the formal rulemaking process
13 commencing with the 45 day public comment period. The
14 regulations were publicly noticed on October 12th, 2001.

15 I would like to direct your attention to
16 attachment one which is the regulatory language. Please
17 go to the fifth page, I believe, which is Section 18085,
18 grounds for Board actions over LEAs.

19 Staff received comments with reference to this
20 one section only and with respect to subsection A4. And
21 that said as a ground for Board action over LEAs, failure
22 of the LEA to perform all applicable duties related to
23 the California Environmental Quality Act. That was the
24 only section, subsection I should say, that received
25 comments. And both comments opposed the proposed

1 language as it stood.

2 Board staff considered these comments very
3 carefully in consultation with division staff and the
4 legal office, and offer the following as a response:

5 Currently operator requirements and LEA
6 responsibility with respect to CEQA are codified in both
7 Title 14 and 27, and actually statute in Division 30 of
8 the PRC in two sections, 44004 and 44005 mandate
9 enforcement agency reviews and determinations,
10 specifically pursuant to Division 13 of the PRC, that's
11 the CEQA statute, beginning with Section 21000.

12 And finally, existing language currently in
13 Title 14, 18081F states, "The LEA shall perform all
14 applicable duties related to the California Environmental
15 Quality Act, Public Resources Code Section 21000 and
16 sequential."

17 So as such, staff is unable to alter the
18 proposed language in 18085(A)(4) without restricting or
19 conflicting with existing statutory and regulatory
20 language.

21 And staff recommends if no significant comments
22 are received today, option one, which is adopting
23 Resolution 2002-24, which approves the proposed
24 regulations for adoption, finds the proposed regulations
25 exempt from the CEQA process requirements, and directs

1 staff to complete the rulemaking process with the Office
2 of Administrative Law.

3 This concludes my presentation. I'd be happy to
4 answer any questions you may have.

5 BOARD CHAIR MOULTON-PATTERSON: Thank you.
6 Questions?

7 Mr. Jones, did you have one?

8 BOARD MEMBER JONES: No.

9 BOARD CHAIR MOULTON-PATTERSON: Okay.

10 BOARD MEMBER JONES: I'll move adoption if we
11 don't have a question.

12 BOARD CHAIR MOULTON-PATTERSON: Okay. No, we
13 don't.

14 BOARD MEMBER JONES: Is that, I'll move adoption
15 of Resolution 2002-24, consideration of adoption of
16 regulations for the process of Board withdrawal of its
17 approval of local enforcement agency designations.

18 BOARD MEMBER MEDINA: Second.

19 BOARD CHAIR MOULTON-PATTERSON: Motion by Mr.
20 Jones, seconded by Mr. Medina to approve Resolution
21 2002-24.

22 Please call the roll.

23 BOARD SECRETARY VILLA: Eaton?

24 BOARD MEMBER EATON: Aye.

25 BOARD SECRETARY VILLA: Jones?

1 BOARD MEMBER JONES: Aye.

2 BOARD SECRETARY VILLA: Medina?

3 BOARD MEMBER MEDINA: Aye.

4 BOARD SECRETARY VILLA: Paparian?

5 BOARD MEMBER PAPARIAN: Aye.

6 BOARD SECRETARY VILLA: Roberti?

7 BOARD MEMBER ROBERTI: Aye.

8 BOARD SECRETARY VILLA: Moulton-Patterson?

9 BOARD CHAIR MOULTON-PATTERSON: Aye.

10 Item 52.

11 MS. NAUMAN: Item 52 is consideration of
12 adoption of regulations for the local enforcement agency
13 enforcement assistance grants.

14 Gabe Aboushanab will also make this
15 presentation.

16 MR. ABOUSHANAB: Thank you, Ms. Nauman.

17 The proposed regulations establish a framework
18 for the LEA enforcement assistance grants as far as
19 disbursement and oversight in addition to fulfilling a
20 statutory mandate to adopt these regulations.

21 The original authorization of the enforcement
22 assistance grant was PRC 46504. The awards began back in
23 1991 and continued since.

24 The LEA enforcement assistance grant is a
25 unique, statutorily mandated, non-competitive block

1 grant, and it is used by LEAs to carry out solid waste
2 facility permitting, inspection, and enforcement
3 programs.

4 The criteria to determine the grant amount was
5 based on the jurisdiction's population, number of
6 landfills, in addition to a base amount of 15,000.

7 And briefly, in 1993 the PRC was revised, and
8 two important changes emerged from Section 43230.

9 The first specified LEAs to be the grant
10 recipients, which was not mandated in the earlier section
11 46504.

12 And the second allowed the grants to be used for
13 solid waste facilities rather than just disposal sites.
14 And these changes have been incorporated in the grant
15 program.

16 Previously in June, 2001 an agenda was presented
17 to the Board at which time approval was given to begin
18 the formal rulemaking process commencing with the 45 day
19 public comment period. These proposed regulations were
20 publicly noticed on November 30, 2001.

21 And actually staff have received no comments,
22 either positive or negative, so I have none to report.
23 And recommend, unless significant comments are received
24 today, adoption of Resolution 2002-25, which approves the
25 proposed regulations for adoption, finds the proposed

1 regulations exempt from the CEQA process, and directs
2 staff to complete the rulemaking process with OAL.

3 This concludes my presentation, and I'd be happy
4 to answer any questions.

5 BOARD CHAIR MOULTON-PATTERSON: Thank you. And
6 we have no speakers, no comments.

7 Mr. Jones.

8 BOARD MEMBER JONES: I'd like to move adoption
9 of Resolution 2002-25, consideration of adoption of
10 regulations for local enforcement agency enforcement
11 assistance grants.

12 BOARD MEMBER MEDINA: Second.

13 BOARD CHAIR MOULTON-PATTERSON: Motion by Mr.
14 Jones, seconded by Mr. Medina to approve Resolution
15 2002-25.

16 Please call the roll.

17 BOARD SECRETARY VILLA: Eaton?

18 BOARD MEMBER EATON: Aye.

19 BOARD SECRETARY VILLA: Jones?

20 BOARD MEMBER JONES: Aye.

21 BOARD SECRETARY VILLA: Medina?

22 BOARD MEMBER MEDINA: Aye.

23 BOARD SECRETARY VILLA: Paparian?

24 BOARD MEMBER PAPARIAN: Aye.

25 BOARD SECRETARY VILLA: Roberti?

1 BOARD MEMBER ROBERTI: Aye.

2 BOARD SECRETARY VILLA: Moulton-Patterson?

3 BOARD CHAIR MOULTON-PATTERSON: Aye. Okay.

4 We're going to be taking our lunch break now. We will
5 return at 1:30.

6 (Thereupon the luncheon recess was taken.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 AFTERNOON SESSION

2 --oOo--

3 BOARD CHAIR MOULTON-PATTERSON: Do you have any
4 ex-partes, Mr. Eaton?

5 BOARD MEMBER EATON: I just had a quick hello to
6 Sean and Evan Edgar, and I did receive a correspondence
7 from, I think, Ms. Miller from Copperopolis. I checked
8 my e-mail.

9 Thank you.

10 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

11 BOARD MEMBER JONES: Thanks, Madam Chair. Judy
12 Ware on C&D, Mark Aprea on C&D, Denise Delmatier on C&D,
13 Chuck Helget and Evan Edgar on Cold Canyon.

14 BOARD CHAIR MOULTON-PATTERSON: Mr. Medina.

15 BOARD MEMBER MEDINA: None to report.

16 BOARD CHAIR MOULTON-PATTERSON: I just said
17 hello to Chuck Helget, and that was it.

18 So we're going to go back to item number 47, is
19 that correct, Ms. Nauman?

20 MS. NAUMAN: That's correct, Madam Chair.

21 BOARD CHAIR MOULTON-PATTERSON: And then to two,
22 and then finish up 50.

23 MS. NAUMAN: Right.

24 BOARD CHAIR MOULTON-PATTERSON: And then we'll
25 go into the next group.

1 BOARD MEMBER MEDINA: Madam Chair, before we
2 begin I'd like to just take this opportunity to introduce
3 someone who's new to my staff, our assistant Janine
4 Harris. Janine, if you would stand up, please.

5 BOARD CHAIR MOULTON-PATTERSON: Glad to have
6 Janine.

7 BOARD MEMBER MEDINA: Janine is a graduate of
8 Brooks College and has worked as secretary to the office
9 of Public Affairs and as the Board's receptionist, and
10 prior to working for the Board Janine worked as a social
11 worker for Yuba County and in private enterprise.

12 And we just want to welcome you aboard, Janine.

13 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
14 Medina. Okay.

15 MS. NAUMAN: Item 47 is consideration of
16 approval of new sites for the solid waste disposal site
17 and co-disposal site cleanup program. We have five sites
18 for you today.

19 Scott Walker is going to make the presentation,
20 and then we have representatives from Santa Barbara
21 County on the Tang site, representatives from the City of
22 San Diego on the Quince Street site, and representatives
23 of Kern County on the Shafter burn dump number one, and
24 they'd like to address the Board as part of the staff
25 presentation before your questions.

1 Thank you.

2 MR. WALKER: Thank you, Madam Chair, members of
3 the Board.

4 The total funding recommended for these five
5 projects under the solid waste cleanup program is
6 \$2,380,000.

7 Just to run through a little bit of broad
8 factors on these sites. They all are of the highest
9 priority or A priority with respect to public health and
10 safety and the environment. They're all listed as
11 anticipated cleanup projects to be considered in the
12 December 5th agenda item that we had on the closed,
13 illegal, and abandoned site program where we identified
14 and went through the current knowledge of sites
15 throughout the state, and their potential need for
16 cleanup.

17 Another thing is that all of the activities
18 proposed are specifically eligible under the program, and
19 cost recovery would apply as one of the projects, which
20 is the Tang illegal disposal site which we'll get into a
21 little later.

22 Because we have two proposed burn dump cleanup
23 projects in this item, the Shafter and the Quince Street
24 sites, I'd like to first provide a quick background on
25 Cal EPA burn dump work group activities and how it

1 relates to these projects in general.

2 I'd also like to point out that Dorothy Reis,
3 the Deputy Director of site mitigation for DTSC, is also
4 here to answer questions at the end of this item, if
5 necessary.

6 To recap, burn dumps are pre-regulation
7 municipal solid waste landfills that operated under
8 accepted practices at the time by open burning. These
9 sites are solid waste disposal sites subject to the
10 Board's jurisdiction, and we work on these through the
11 solid waste cleanup program and the closed, illegal, and
12 abandoned sites programs.

13 Local enforcement agencies are the only agencies
14 directly tracking and inspecting these sites overall on a
15 statewide basis. However, it must be pointed out that
16 burn dump sites may also be considered on a case by case
17 basis as hazardous substance release sites subject to
18 jurisdiction of DTSC. And also the Regional Water Board
19 may also have jurisdiction, mainly in those cases with
20 impacts to surface waters. Burn dumps are not really a
21 major threat to groundwater based on the Water Board's
22 determinations.

23 Given these multiple agencies involved, the
24 coordination clearly can be problematic. And in
25 response, staff convened a working group of agencies,

1 starting in July of 2000, to facilitate coordinating on
2 individual sites, and then also in general to kind of
3 carve out and figure out better the relative roles and
4 responsibilities.

5 DTSC assisted in this effort by identifying
6 those general types of burn dump sites that they would
7 consider hazardous substance release sites subject to
8 their jurisdiction and oversight.

9 Included in this category are the, those sites
10 with existing or proposed sensitive land uses or
11 non-restricted land use, included with the site high
12 density urban, residential, schools, hospitals, day
13 cares, equivalent type of land use cases. And in those
14 cases DTSC would be the primary oversight agency.

15 Board staff as part of the working group
16 compiled all burn dump sites throughout the state,
17 including those specifically with sensitive land use.
18 And the 38th and Quince Street site which I refer to to
19 be considered today is an urban residential, and
20 therefore is subject to DTSC as the primary oversight
21 agency.

22 In other cases, such as Shafter which is
23 essentially agricultural, non-irrigated open space, the
24 Board and LEA would be considered the primary oversight
25 agency.

1 I will now go briefly over each project starting
2 first, and let's start first with the two burn dump sites
3 to kind of tie those two into this brief overview.

4 The Shafter burn dump, Kern County. This 39
5 acre site was closed in 1972, was subsequently developed
6 to rural residential homes. The site is surrounded by
7 agricultural land use, and violations of state minimum
8 standards were issued include cover due to exposed waste,
9 and also there's some illegal dumping that occurred at
10 the site.

11 In response to the public health concerns, Kern
12 County relocated residences in 1993 and purchased the
13 property in 1998.

14 Kern County Waste Management Department has
15 expanded approximately \$400,000 to date, and they'll
16 continue to incur costs related to this project,
17 inclusive of which is the purchase of the property,
18 testing and assessment of the waste at the site, and site
19 security.

20 The county has requested a Board managed cleanup
21 that would use the Board's contractor, existing
22 contractor to complete the cleanup of the site which
23 would include removing some illegal dumping material, and
24 consolidation and cover of the burn ash where it's
25 exposed into a well covered, contained fill. The

1 estimated cost to the Board is \$600,000.

2 The county would be responsible for maintenance
3 of the site after cleanup, and will be subject to Deed
4 notation and ongoing LEA inspections to ensure
5 maintenance, and control potential future land use.

6 I'd also like to point out that a site access
7 agreement would be executed first prior to the Board
8 entering the site in order to ensure that the Board has
9 liability protection.

10 Other funding mechanisms for this project were
11 evaluated. A matching grant would not significantly
12 increase the leverage of Board funds, and would also
13 significantly delay this cleanup project and other
14 cleanup projects planned by the county to pursue on their
15 own.

16 The repayment of a loan, even for an extended
17 period of time, would be a significant draw on the county
18 Waste Management Department's budget, that would delay
19 even further investigation and remediation of other sites
20 that the county has planned.

21 I don't want to get into too much detail, again
22 the county is here to answer questions later; but I just
23 wanted to point out that Kern County has been and
24 continues to be one of the most proactive agencies in the
25 state dealing with burn dump sites. And the county has

1 given the Board members a handout of their program, and
2 they've got like 54 sites statewide, and they've done a
3 lot of cleanups on their own. The Board has, to date has
4 assisted them on, I believe, about three cleanup
5 projects, and this would be the fourth.

6 And with that we'll shift into the Quince Street
7 burn dump site, City of San Diego. And again, like the
8 City of San Diego's probably the other, you know, the
9 other big, real proactive local jurisdiction on the burn
10 dumps, so you've got the two main local jurisdictions
11 that have been out in front on this whole issue with us
12 today.

13 They have requested a matching grant up to
14 \$750,000 to clean up the Quince Street burn dump site,
15 and this site is located in City Heights which is an
16 urban low income area of San Diego, and it's close but
17 it's a separate site from the 38th and Redwood project
18 which the Board approved a matching grant last June, and
19 the project is basically completed and finishing touches
20 are coming to fruition.

21 The Quince Street site was privately owned and
22 operated, operational as early as 1928. It closed
23 probably prior to the residential development in the
24 1950s, and the records are pretty limited on this site,
25 but there was some record that waste was hauled to the

1 site by private parties, but also the city refuse did
2 bring some waste to the site, and they have started their
3 collection in the year 1919.

4 There are over 30 sites that the city has
5 investigated using their contractor, 30 residential, or
6 30 properties, most of them being residential.

7 Thirteen residential properties, an additional
8 road right-of-way is significantly impacted by exposed
9 burn ash and contaminated soils. The city has done, has
10 continued a number of public outreach and public meetings
11 in this area, similar to what they've done with 38th and
12 Redwood, and they've also arranged for blood bank testing
13 of 125 residents nearby the site. And fortunately, no
14 elevated blood lead was found, so that's good news.

15 The proposed project would remove the top three
16 feet of contaminated soils in the exposed areas and
17 replace with clean fill. These wastes would be hauled to
18 and disposed of at the Kettleman Hills class one
19 landfill.

20 Deed restrictions will be used to control future
21 land use. And the local enforcement agency, which has
22 been quite active in ensuring that this project, this
23 site gets cleaned up, will be monitoring to ensure that
24 the site's properly maintained and the deed restrictions
25 are adhered to.

1 The Board costs are, again, are specifically
2 eligible. They include waste, reimbursement for waste
3 excavation and disposal, grading, site security, and
4 engineering environmental services.

5 The city plans to use the U.S. EPA's contractor
6 to actually do the physical cleanup activity work.

7 The estimated total cost is approximately \$2
8 million. No costs associated with the Board's match
9 would be used for property compensation, deed
10 restrictions, or loss of use. The matching grant
11 agreement will include appropriate indemnification
12 language that is approved by the Board's legal office.

13 As mentioned before, DTSC oversight is
14 required. This oversight will be implemented prior to
15 the start of the project through a voluntary cleanup
16 program agreement between the city and DTSC.

17 Board staff will be involved in reviewing
18 activities to meet this agreement, but we're not a
19 signatory to, in this agreement.

20 DTSC oversight costs are not included in the
21 project cost estimate. The city is responsible for those
22 above and beyond the current project cost estimate. No
23 Board funds will be used to pay DTSC oversight costs.

24 Now we shift from burn dumps into the Tang
25 illegal disposal site which is in Santa Barbara County.

1 And the county LEA has requested a Board managed cleanup
2 project for this illegal disposal site. It's adjacent to
3 farmland and residential development near Santa Maria.

4 The estimated cost to the Board would be
5 \$100,000, and cost recovery would be pursued against the
6 property owners.

7 The LEA has pursued extensive enforcement action
8 for several years with limited success. And again, I
9 don't want to get into the details of that too much other
10 than to say that the LEA is here to give you a more
11 detailed rundown of what's been going on if you so
12 desire.

13 But there has been court action on this
14 particular site, requiring the owners to clean up the
15 site. And the owners have expended some money to clean
16 up, but they haven't finished and they refuse to complete
17 it.

18 There is a current order that's been issued, a
19 revised order, and to complete this cleanup with specific
20 dates, as yet though the owners have not complied with
21 any of the dates on that.

22 I wanted to point out in a letter dated
23 yesterday, January 22nd, the property owners attorney has
24 requested that the Board delay consideration of this site
25 until August of 2002.

1 Based on the history of delay and lack of
2 compliance by the property owner, Board staff recommend
3 that the Board deny this request by approving staff's
4 recommendation. The owner would have the opportunity to
5 clean up this project, this site as required by the LEA
6 without involvement of the Board, and it's the staff's
7 analysis and the LEA's determination also that with the
8 Board's approval of this project, this provides a
9 significant amount of additional leverage to get this
10 owner to do what he's supposed to do.

11 But if he doesn't, then we would be prepared to
12 enter the site, remove the waste, complete the cleanup,
13 and the LEA would assist us with site access, and clearly
14 it's a viable cost recovery case.

15 I wanted to just give you a quick note on cost
16 recovery issues. In the item we mention that the county
17 would attempt to facilitate the Board's cost recovery
18 through its enforcement actions against the responsible
19 party. We also said that if this was insufficient, we
20 would have to retain the Attorney General to prosecute a
21 cost recovery action in Superior Court.

22 After this item went to print the Madam Chair
23 received a letter from the county LEA saying that while
24 the county would continue enforcement efforts, they may
25 not be able to facilitate the Board's cost recovery

1 through those actions.

2 So that would trigger the Board legal office
3 going through the Attorney General's office to perform
4 the cost recovery. And it's our understanding that there
5 are significant aspects that would be amenable to cost
6 recovery in this particular case.

7 And again, the LEA is here at the end to answer
8 any questions that you may have.

9 The fourth project that we have on for today is
10 the Thurman Avenue illegal disposal site which is in the
11 City of Los Angeles. And this proposed matching grant
12 project for up to \$430,000 in funding from the Board
13 would clean up a significant high priority site of
14 ongoing trash accumulation from downtown Los Angeles at
15 Ballona Creek near the intersection of Venice and
16 Fairfax.

17 Ballona Creek is the primary urban stream and
18 enters the Santa Monica Bay at Venice Beach and
19 Dockweiler State Beach, and these are areas that are
20 pretty significantly impacted by trash and other solid
21 waste from the urban area and, which is concentrated in
22 this particular outfall which is identified as a very
23 high priority location where a tremendous amount of trash
24 is accumulated and bypasses through into the coastal
25 areas.

1 And again, this project is very similar to three
2 projects previously approved by the Board for the L.A.
3 urban area, and this is a very, very similar project to
4 what the Board's seen before.

5 And finally, the final site, the final project
6 is San Francisco illegal disposal sites with the city and
7 County of San Francisco. And this is a proposed illegal
8 disposal site grant for up to \$500,000 requested from the
9 city, County of San Francisco Department of Public
10 Works.

11 And this would assist in cleanup and control of
12 25 chronic illegal disposal site hot spots in the
13 Hunter's Point and low income blighted areas of San
14 Francisco.

15 Board staff has provided a map showing the
16 location of these sites to Board members, and we also
17 have copies at the back desk available to the public.

18 San Francisco's budgeted approximately \$800,000
19 for their nuisance abatement illegal dumping program, but
20 they clearly are overwhelmed with the problem right now,
21 and there has been some newspaper articles related to
22 this whole issue, and a lot of interest on the mayor in
23 doing more in this area.

24 The proposed grant award would provide the
25 additional funding needed for this program to

1 significantly be enhanced to adequately address this
2 problem. And this project, this project is very similar
3 to the City of Oakland's ongoing grant project that was
4 approved by the Board last June.

5 Board funds would be used for cleanup of these
6 sites, including labor, tipping fees, site barriers, and
7 signs. The Department of Public Works would continue
8 assessment of sites, community involvement activities,
9 monitoring, maintenance, and enforcement. They have a
10 pretty vigorous enforcement effort that they plan to
11 enhance with regard to surveillance.

12 These are public right-of-ways, but they do have
13 prosecution through local ordinances which they pursue
14 against individuals that they can, you know, find cause
15 the dumping. But again, most of these are in the
16 blighted, you know, urban areas, low income urban areas.

17 Then we'll also, another part of it is similar
18 to Oakland, they will submit a final report to the Board
19 documenting the findings of the project, and also going
20 over the success of their effort to enhance the cleanup
21 of illegal dump sites in these urban areas.

22 And also we hope that these will be useful for
23 other jurisdictions who are faced with this problem.

24 In conclusion, staff recommends adoption of
25 Resolution 2002-20 approving the proposed projects

1 pursuant to the solid waste cleanup program.

2 Staff is available to answer questions. And in
3 addition, we have representatives from the applicants for
4 the Shafter, Quince, and Tang projects in attendance.

5 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
6 Walker. Before I go to Board questions or comments, Mr.
7 Paparian, do you have any ex-parte?

8 BOARD MEMBER PAPARIAN: Ran into some of the
9 representatives of BFI following up on their Newby Island
10 item.

11 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
12 you.

13 Senator Roberti?

14 BOARD MEMBER ROBERTI: No ex-parte.

15 BOARD CHAIR MOULTON-PATTERSON: Thank you.
16 Okay. Any questions, comments at this time? We do have
17 speakers.

18 Mr. Jones, would you like to --

19 BOARD MEMBER JONES: Just one quick one, Madam
20 Chair. On the Tang property, the \$80,000 or whatever,
21 hundred grand to clean it up, I guess the letter we saw
22 or the write-up said that they had already, the property
23 owners had spent \$220,000 to clean it up, is that
24 verified?

25 MR. WALKER: Yeah, I refer to the LEA, but I

1 believe it's approximately \$220,000 that they have spent.

2 BOARD MEMBER JONES: To date. I understood it
3 sounds like somebody told 'em 220 will get it done, and
4 now they're here with another eighty and they're beefing
5 it, but the letter from the attorney makes it sound like
6 the woman is prepared to clean it up or it's this --
7 well, Schmaeling.

8 MR. WALKER: I think maybe I'd like to have Mike
9 come up and answer your questions.

10 BOARD CHAIR MOULTON-PATTERSON: Mr. Schmaeling.

11 MR. SCHMAELING: It's nice to be here for my own
12 county. Yeah, this has been a long involved case. I
13 guess the, without going into a lot of the history, it
14 involves a divorce between the two property owners and
15 the word recalcitrant keeps coming to my mind, I don't
16 know if I can use that in a public hearing or not.

17 But I started this case back in early October,
18 1999, and was issuing notices of violations back then.
19 They have continually said, "Well we don't have any
20 money." These people own property all over the United
21 States, so they're using the divorce kind of to do
22 things.

23 The letter that you just received, yeah, they
24 probably did spend \$220,000. The \$80,000 was part of a
25 stipulated judgment that our Superior Court judge ordered

1 them to pay, but also part of that stipulated judgment
2 was that they finish the cleanup. They spent the \$80,000
3 and they thought that they were done.

4 A BOARD MEMBER JONES: All right. That clears it
5 up. Thanks, Mike.

6 BOARD CHAIR MOULTON-PATTERSON: Thank you.

7 Nancy Ewert, Kern County;

8 MS. EWERT: Good afternoon, ladies and
9 gentlemen, members of the Board. I'm Nancy Ewert, I'm
10 the technical resources manager for the Kern County Waste
11 Management Department.

12 Thank you for considering today the Board
13 managed grant to remediate the Shafter burn dump.

14 During the early 1990s, heightened environmental
15 awareness, encroachment of development, and two lawsuits
16 forced Kern County to reevaluate old burn dumps.

17 As a result, the Kern County Waste Management
18 Department developed a burn dump strategy which has been
19 approved by our Board of Supervisors. It identifies,
20 evaluates risk, outlines remediation strategies, and
21 qualified -- quantifies the financial impact of 54 old
22 burn dumps, and we're providing you with copies of that
23 strategy today.

24 Two Waste Board actions facilitated Kern County
25 in this endeavor.

1 One, LEA advisory 56 provided clear guidelines
2 for burn dump remediations.

3 Two, the AB 2136 program helped Kern County
4 tackle its first burn dumps, and gave our staff guidance
5 and expertise to tackle other burn dumps on our own.

6 The Kern County burn dump strategy and status
7 reports project that the cost of 54 burn dumps will be
8 approximately \$10 million for remediation.

9 This is a daunting task for any governmental
10 agency. However, I'm happy to report that we are over
11 halfway there.

12 Also, by prioritizing our sites based on risk,
13 we have already remediated some of our highest risk and
14 our largest burn dump site.

15 The Shafter burn dump site, however, is
16 evaluated as a high risk site, originally because of the
17 residents living on the site, and now because of illegal
18 dumping and scavenging.

19 Kern County allocates approximately \$750,000 per
20 year for burn dump remediation, and every year we are
21 making headway. Kern county's ten year financial
22 forecast projects similar funding until all burn dumps
23 are remediated.

24 By providing Kern County with a \$600,000 Board
25 managed grant, the Waste Board helps Kern County to

1 achieve its goal and remediate all burn dump sites.

2 In addition to the financial support, a Board
3 managed grant provides the added benefit of trained
4 engineers and project managers.

5 As with most operating departments, it is often
6 difficult to get burn dumps prioritized high with
7 landfill operations and recycling programs. The AB 2136
8 program is a Godsend to local jurisdictions.

9 Again, thank you for considering the Shafter
10 burn dump remediation as part of the AB 2136 program.

11 If you have any questions, I'd be happy to
12 answer them.

13 BOARD CHAIR MOULTON-PATTERSON: Thank you for
14 all your efforts, it sounds like you're doing a great
15 job.

16 MS. EWERT: We're moving forward. Thank you.

17 BOARD CHAIR MOULTON-PATTERSON: Next speakers
18 are Sylvia Castillo and Chris Gonaver, City of San Diego.

19 MS. CASTILLO: Good afternoon, I'm Silva
20 Castillo with the City of San Diego Environmental
21 Services Department.

22 I'm glad that, that we're finally moving forward
23 on this project, and I have four areas that I just wanted
24 to emphasize about this project.

25 The first one being that I feel very fortunate

1 that EPA has been willing to contract with us, that is
2 saving us a considerable amount of time preparing plans
3 and contracts and going out to bid.

4 The second point I wanted to bring up, as Mr.
5 Walker had mentioned, the 1.9 million estimated project
6 cost, that does not include the additional 1.2 million
7 that may result from property acquisition. So this is
8 over a \$3 million project that we're looking at.

9 Thirdly, I just wanted to also note that DTSC,
10 we were informed by DTSC that they would be taking
11 oversight of this project, and that was in early January.
12 And since then there's been quite a bit of progress in
13 meeting with them and setting up a timeline. And it's a
14 very tight timeline in order to start the remediation in
15 April. They've been cooperative, they seem willing to
16 meet this timeline. We do not have the agreement, the
17 voluntary cleanup agreement completed yet at this time,
18 but I'm hopeful that will occur this week.

19 In addition, as we had talked about the proposed
20 cleanup of the three feet, this is being reviewed by DTSC
21 at this time, and we won't know until later this week
22 whether that's also acceptable to them.

23 And lastly, I wanted to bring up our community
24 outreach in the media and the attention that's been
25 occurring to the site. Just this morning, front page of

1 the local section of the San Diego Union Tribune states,
2 "They're on Dangerous Ground. Cleanup of Contaminated
3 Soil in City Heights Planned for May."

4 If anyone wants a copy I'd be happy to give you
5 one.

6 Anyway, thank you very much for your
7 consideration.

8 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.
9 Castillo. And that concludes our public speakers.
10 Mr. Medina.

11 BOARD MEMBER MEDINA: Madam Chair, I wanted to
12 move this item, but before I do I just wanted to touch on
13 the projects located in the city of San Francisco. I
14 know that they are located in the southeastern part of
15 the city which for years has been the site where they
16 have located power plants, sewage treatment plants,
17 animal rendering plants, auto wrecking yards, and has had
18 one of the highest incidences of asthma that's been
19 reported.

20 And so I know that all of the sites that were
21 identified by the city of San Francisco really do need
22 cleanup, and I think all the other projects that have
23 been presented here today are worthy of support, so I'd
24 like to move this item.

25 BOARD CHAIR MOULTON-PATTERSON: Thank you. We

1 have a motion by Mr. Medina, I'll second it. Seconded by
2 Moulton-Patterson to approve Resolution 2002-20 revised.

3 Seeing no questions, please call the roll.

4 BOARD SECRETARY VILLA: Eaton?

5 BOARD MEMBER EATON: Aye.

6 BOARD SECRETARY VILLA: Jones?

7 BOARD MEMBER JONES: Aye.

8 BOARD SECRETARY VILLA: Medina?

9 BOARD MEMBER MEDINA: Aye.

10 BOARD SECRETARY VILLA: Paparian?

11 BOARD MEMBER PAPARIAN: Aye.

12 BOARD SECRETARY VILLA: Roberti?

13 BOARD MEMBER ROBERTI: Aye.

14 BOARD SECRETARY VILLA: Moulton-Patterson?

15 BOARD CHAIR MOULTON-PATTERSON: Aye.

16 Thank you. Thank you, Mr. Walker, for an
17 excellent report.

18 This takes us back to item two, a continued
19 item.

20 MS. NAUMAN: Item two is consideration of
21 approval to formally notice proposed regulations for
22 construction demolition debris and inert waste transfer
23 and processing facilities and operations.

24 Allison Reynolds will make the presentation.

25 MS. REYNOLDS: Good afternoon, Madam Chair and

1 Board members. My name is Allison Reynolds.

2 The purpose of this item is to bring forward for
3 consideration by the Board approval to notice the
4 proposed regulations for construction demolition and
5 inert debris transfer processing operations and
6 facilities.

7 Since the last Board meeting, staff held
8 Northern and Southern California workshops in order to
9 solicit input around resolvable key issues, and also to
10 gather input on phase two, the C&D inert disposal
11 regulations. These interactions, plus the direction by
12 the Board in December, resulted in the latest draft
13 version of the regulations dated January 17th, 2002.

14 Staff e-mailed the latest draft version of the
15 regulations to the interested parties distribution list
16 on Thursday of last week. The revised draft regulations
17 were also posted on the Board's Web site on Tuesday to
18 assist stakeholders in the review of the regulations.

19 I'll now address some key changes to the draft
20 regulations since last month's Board meeting. Staff
21 changed the amount of incoming tonnage allowed for CDI,
22 that's construction demolition and inert debris
23 operations in the notification tier to under one hundred
24 tons per day.

25 As directed by the Board, staff added the

1 registration tier for medium volume CDI facilities, and
2 set the tonnage limits at one hundred tons per day to
3 under five hundred tons per day.

4 Staff amended the tons per day for a large
5 volume of CDI facilities in the full tier to five hundred
6 tons per day and over.

7 Staff added a registration tier to chipping and
8 grinding operations at 200 tons per day or more.

9 Staff amended the construction demolition debris
10 definition to address concerns regarding the possibility
11 for acceptance of municipal solid waste at CDI operations
12 and facilities.

13 Staff amended the storage calculation to include
14 a limit of thirty days worth of incoming material at the
15 allowed storage limit.

16 Staff amended the inert debris definition to a
17 volume of one percent putrescibles.

18 And finally, staff added a new exclusion for
19 locations where fifteen cubic yards or less of separated
20 for reuse material is handled.

21 Generally speaking, regarding interested party
22 comments on the draft regulations, LEA stakeholders have
23 brought up concerns with enforceability.

24 Waste industry stakeholders have brought up
25 issues regarding the similarity of C&D debris to

1 municipal solid waste and the associated environmental
2 hazards.

3 And C&D industry stakeholders have expressed
4 concerns about overregulation and the marketing impacts
5 associated with being defined as solid waste facilities.

6 Now I'd like to show the Board and the audience
7 a Power Point presentation that may help to shed some
8 light on the composition of C&D debris, and associated
9 operations of facilities as most of the stakeholder
10 concerns were with C&D rather than inert debris, and to
11 also show an overview of some of the requirements that
12 the Board will adopt to ensure that municipal solid waste
13 will not be accepted at these facilities.

14 There are four part tests that we use in the
15 draft regulations, and they are crucial to the
16 understanding of the regulations, and I'd like to briefly
17 explain their meaning.

18 The first part test was borrowed from past
19 recycling center language and applied to the CDI and
20 inert debris definitions in order to distinguish them
21 from the solid waste stream.

22 The LEA has the authority from first enforcing
23 this part test as well as the following test.

24 The second part test applies to recycling
25 centers and is tied to the first part test, and

1 essentially allows up to ten percent residual material
2 which can go to the landfill.

3 As a more objective measurement of the first
4 part, please note that the Board has only required the
5 second part application at recycling centers, not at any
6 Board regulated sites.

7 The third test applies to recycling centers and
8 to CDI and inert operations and facilities in order to
9 prevent the acceptance of putrescible material. This
10 test is a tool for staff and LEAs to distinguish the
11 differences between a municipal solid waste processing
12 site, and any site that processes a source separated
13 waste stream.

14 The fourth test is separated at the point of
15 generation. It requires the recyclable materials to be
16 kept in separate bins from the source and not commingled,
17 with the exception of steel and lumber. The test was
18 borrowed from the draft compostable materials regulations
19 and applies only to recycling.

20 Here is an excerpt of the C&D definition. Note
21 that it contains the first and third part tests as shown
22 in green. It is important to understand that if any
23 operation or facility fails any part test in this
24 definition it will be subject to Article 6.0, Transfer
25 Processing and Operation of Facilities requirement. And

1 again, the LEA is responsible for enforcing these tests.

2 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

3 BOARD MEMBER JONES: Allison, just a question
4 there. Under this definition, if somebody is operating a
5 C&D site, and an LEA goes in and, in fact, they have a
6 municipal solid waste, you said the remedy is, and you
7 listed the title.

8 Is the remedy that they automatically have to go
9 into a full solid waste facility permit? Or, and cease
10 that operation? Or are they going to get some kind of a
11 violation? I don't mean to interrupt your flow, but it's
12 kind of critical.

13 MR. DE BIE: Mark de Bie with Permitting and
14 Inspections Branch. Just try to restate the question so,
15 and a facility is up and running under these regs, so
16 they've been given a permit as a construction demolition
17 inert site, and the LEA comes in, determines that certain
18 aspects of their operation are not consistent with the
19 definition, they have MSW on site, what would occur?

20 A violation for the permit would be noted,
21 certainly I would expect that to occur, you're in
22 violation of your CDI, you're taking materials that
23 you're not allowed to take.

24 What would occur after that would be potentially
25 knowing how many LEAs operate, the ability of the

1 operator to cease that aspect of the operation, that is
2 bringing MSW into the site that's put them in violation
3 of their CDI permit. Certainly the LEA could also find
4 that they are a different kind of facility because
5 they're taking in that waste stream and require them to
6 apply for the necessary permit if they wanted to continue
7 taking that particular waste stream in.

8 BOARD MEMBER JONES: Because under the recycling
9 exclusion, when an LEA finds out that somebody, in fact,
10 is not a recycling center, the remedy is they must then
11 get a permit, correct?

12 MR. DE BIE: They must, yes.

13 BOARD MEMBER JONES: And cease the operation.

14 MR. DE BIE: Yes, there would be a cease and
15 desist order issued because they are operating a solid
16 waste facility without a permit, and then they would be
17 required to either stop everything or begin the process
18 to get a permit.

19 The LEA could choose to implement a compliance
20 schedule that would allow them to operate to some extent
21 as they're going through the permit process, so it
22 wouldn't necessarily result in them shutting the gate.
23 That's certainly an option, but not necessarily the
24 ultimate outcome.

25 BOARD MEMBER JONES: Thank you.

1 Thanks, Madam Chair.

2 BOARD CHAIR MOULTON-PATTERSON: Thank you.

3 MS. REYNOLDS: Here's an overview of the
4 criteria that CDI recycling centers have to meet. They
5 must meet all the part tests as I described in the
6 earlier slides.

7 It's interesting to note that in the August, 1999
8 draft version of the regulations, these recycling centers
9 could commingle their material.

10 In August, 2001, staff added the third and the
11 fourth part test to recycling centers because of concerns
12 surrounding commingled recyclables possibly containing up
13 to ten percent residual solid waste and one percent
14 putrescible waste.

15 Here's an overview of inert type A debris
16 recycling centers. Commingling is allowed because staff
17 felt that these materials posed minimal risks to health
18 and safety due to their inert nature.

19 This slide shows that the full permit
20 requirements -- excuse me.

21 This slide shows that the EA notification
22 requirements apply to a small volume CDI processing
23 operation which accepts under one hundred tons per day.
24 Please note that commingling is allowed, and the first
25 and third tests apply.

1 This slide shows that the registration permit
2 requirements apply to a medium volume CDI processing
3 operation which accepts between one hundred tons per day
4 and up to five hundred tons per day. Commingling is
5 allowed, and the first and third tests apply.

6 These sites will be inspected monthly and must
7 file a plan with the LEA. Although the operation is not
8 required to demonstrate CEQA compliance to the Board,
9 under the registration tier the operator is not exempt
10 from CEQA compliance at a local level.

11 This slide shows the full permit requirements
12 applied to a large volume CDI processing operation which
13 accepts five hundred tons per day or more. Commingling
14 is again allowed, and the first and third tests apply.

15 Now for the photographs. As mentioned earlier,
16 some stakeholders expressed concerns regarding the
17 acceptance of municipal solid waste, and even perhaps the
18 residuals coming from the source separated construction
19 and demolition debris.

20 The following photographs may help to show the
21 volumetric difference between municipal solid waste and
22 C&D material.

23 Here's a picture of approximately 125 tons of
24 municipal solid waste at a large volume transfer facility
25 which complies with a full solid waste facility permit.

1 This picture shows one hundred tons of inert
2 material. Our scale model is the Fresno County LEA Hank
3 Gill. Please note the volumetric difference between the
4 this inert material and the solid waste as shown in the
5 previous slide.

6 Here's Hank again standing next to one hundred
7 tons of presorted C&D material. Again, note the
8 volumetric difference between the C&D material and the
9 municipal solid waste two slides back.

10 From our experience in the field, construction
11 and demolition debris tends to be more dense than solid
12 waste, and obviously less dense than inert debris.

13 Construction demolition debris, as shown in the
14 statute, is a distinct subset of solid waste. And as you
15 can see from this chart, C&D material makes up almost
16 twelve percent of the solid waste stream.

17 C&D debris is comprised of some of the following
18 materials: lumber, cardboard, carpeting, glass, metal,
19 concrete, and brick to name a few.

20 C&D processing sites use trommel magnet systems
21 for metals, floats, and manual labor, and assistance to
22 sort the recyclables from the residual material.

23 It is important to note that this residual
24 material destined for the landfill is still source
25 separated material and less than one percent putrescible

1 rather than municipal solid waste. This residual
2 material going to the landfill could not find a market as
3 in the case of plastic packaging, fiberglass, carpeting,
4 tile, and other unmarketable material.

5 Since there have been some discussions around
6 the differences between MSW, municipal solid waste, and
7 C&D material, staff wanted to show some representations
8 of these types of wastes.

9 And here's a picture of a typical municipal
10 solid waste dumped in a landfill.

11 And the following slides show typical examples
12 of source separated C&D debris. Note the cabinetry and
13 wood frames mixed in with metal.

14 Here's a mound of commingled material containing
15 mostly woody debris. Note the rock and soil mixed in
16 with the lumber from this demolition debris.

17 This material is quite typical. Here is a lot
18 of cardboard, plastic paint pails, and other plastic and
19 wood debris from this construction versus demolition
20 project.

21 Here's some more construction versus demolition
22 debris.

23 And some more.

24 And here's some demolition debris, you can see
25 pallets, wallboard, and some metal.

1 And here's some more demolition debris, notice
2 the aluminum siding, the textile, and the wood.

3 And here's more of the same.

4 And lastly, some metal in a pile. In our tours
5 of six different California C&D debris sites, staff did
6 not see any putrescible material with the exception of on
7 site green waste processing which will be regulated under
8 the draft compostable materials regulations.

9 I hope these slides shed some light on the
10 nature of construction and demolition material.

11 This concludes the Power Point portion of this
12 presentation. We realize that there have been many
13 comments during the workshops and comments have been
14 received by staff over the last few days regarding these
15 issues. Instead of going through all the comments, staff
16 believe the stakeholders are well represented here today
17 and will be able to give you a thorough overview of the
18 remaining concerns.

19 In conclusion, staff recommend that the Board
20 approve staff to normally notice the proposed
21 construction, demolition, and inert debris transfer
22 processing operations and facilities regulations for 45
23 days beginning the formal comment period.

24 This concludes my portion of the presentation.
25 Are there any questions?

1 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.
2 Reynolds. Do you have questions at this time or do you
3 want to go to speakers?

4 BOARD MEMBER PAPARIAN: Yeah.

5 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

6 BOARD MEMBER PAPARIAN: I'm still trying to
7 understand. I know that there's a point of contention
8 about the medium volume facilities, between the hundred
9 and five hundred tons, and what type of material might
10 get in there.

11 Can you just elaborate for me, what type of
12 stuff and how much might get in there that I might not
13 think is inert C&D debris?

14 MS. REYNOLDS: Well we do have the first and
15 the third test that apply, and staff have worked hard at
16 bringing the C&D definition to closer reference the type
17 of waste that would be coming in. And it is up to the
18 LEA though to enforce those part tests.

19 BOARD MEMBER PAPARIAN: Okay. But if we had a
20 facility that was taking 499 tons and was in this tier,
21 what type of stuff might an LEA allow to go in there and
22 how much, or is that not clear from the regs?

23 MR. DE BIE: Given the way the definition has
24 been recrafted, it's staff's expectation that a hundred
25 percent of that material would be C&D.

1 BOARD MEMBER PAPARIAN: Okay. So absolutely, if
2 any MSW at all was mixed in --

3 MR. DE BIE: They would fail the definition.

4 BOARD MEMBER PAPARIAN: Okay. Thank you.

5 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

6 BOARD MEMBER JONES: And I think that's a good
7 question, Mr. Paparian. I mean when I was meeting with
8 staff I kept telling 'em C&D in and of itself, the
9 definition of C&D does not have the environmental
10 potential that MSW does.

11 But you've got to look at the people that
12 operate. They used to operate under the guise of
13 recycling and then created these dumps that we're
14 cleaning up. Then, now -- and I'm not saying all of 'em,
15 but an awful lot of 'em haul what is in picture number
16 one, and they haul it under the guise of the C&D, and
17 that's the problem. Because that stuff does get in
18 there. And it gets in there all the time if we're not
19 careful with the definition.

20 And I mean here we've got a picture probably
21 from Kroeker, Kroeker is a good operator, but all the
22 wood waste behind it's been processed, or looks like it's
23 been pre-processed at least, and then we've got the metal
24 on top of it. So this has already gone through
25 processing of some sort. It didn't come from the job

1 site shredded. So that kind of material doesn't pose a
2 big risk.

3 But it's the stuff that comes in, and the
4 garbage that gets generated and those types of things
5 that people say, "Well, I'm just doing C&D." That's why
6 my question earlier was, "What's the remedy if they get
7 caught?" The remedy has to be that they lose the
8 opportunity to have a C&D site and that they get a full
9 solid waste facility permit. So --

10 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
11 number of speakers, I'd ask that you try and be concise.
12 Justin Malan, followed by Joan Edwards.

13 MR. MALAN: Madam Chair, Board members, thank
14 you. It's a tricky issue for us, I don't think we have
15 consensus amongst the LEAs because of the complexity of
16 the enforcement issue here.

17 As the regulations get more numerous and more
18 tiers are established and more thresholds are
19 established, it makes the LEA's job more difficult,
20 that's an overriding comment I'd like to make.

21 We would like to see these go forward, be
22 released for a 45 day comment period. We do know that
23 they've been held up for quite a long time in this
24 informal discussion, so we certainly support about that.

25 But other than that general comment about the

1 complexity, I'd like to raise four quick issues that the
2 LEAs would like to see addressed during this 45 day
3 period.

4 Firstly, this may be creating a little bit of a
5 disincentive for recycling. And whereas the LEAs don't
6 want to get involved in the market share issue at all, we
7 are generally supportive of recycling, and we would like
8 to see the Board encourage it to whatever extent
9 possible, but we are concerned with the environmental
10 impacts and public health impacts.

11 That takes us to our final point, but the second
12 point and third point would be there are some issues
13 regarding the actual definition of the type A inerts, and
14 we would like to work with your staff to ensure that's an
15 appropriate level of regulation there.

16 And some jurisdictions feel that we really don't
17 have to have that level of regulation, they don't see the
18 concern that has been expressed by some interested
19 parties on the type A inerts.

20 We are pleased that there has been some
21 language, and maybe we have to work a little bit more
22 closely on the language dealing with the ultimate
23 disposal and the period that can, that these wastes can
24 be stockpiled, so that's another issue we'll be looking
25 closely at.

1 But finally, I think the most important point is
2 the one that's been addressed already by Board member
3 Paparian and Jones, and that is we are fully supportive
4 of the issue that you raised about notching it up to the
5 next tier. If it's municipal solid waste that's over and
6 above the limits established, I think the LEAs are
7 perfectly comfortable with taking the necessary, and will
8 take the necessary enforcement action.

9 There's another point that we'd like to suggest
10 that we look at, and that is to provide the LEAs the
11 explicit authority of ordering a remedy of a nuisance, a
12 public nuisance should one be notified or noticed on
13 site.

14 We've worked with thresholds, the one percent
15 putrescible or the ten percent residual, but you must
16 remember that even if there's fifty tons, you could have
17 a public health concern if there's stuff in that fifty
18 tons.

19 We're not tinkering with the ten percent or ten
20 percent or the one percent, but ironically, even though
21 we've got five feet of regulations, sometimes the LEAs
22 have to rely on local public health ordinance, nuisance
23 ordinance to clean up a public health concern.

24 So we would like to see explicit language in
25 these set of regs, and maybe other regs, which say the

1 LEA can step in, and not necessarily order that operation
2 to go to a higher tier, but can order that operator to
3 clean up a public nuisance. It may be a one time event,
4 it may happen frequently, but if, whatever the residual
5 amount, whatever the volume is, if there is a public
6 nuisance we'd like the LEA to have that explicit
7 authority.

8 We'd be happy to work with you, and thank you
9 for all the hard work you and staff are putting to it.

10 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
11 Malan.

12 Joan Edwards, followed by Patrick Munoz.

13 MS. EDWARDS: Well, like most of you I'm sure up
14 there, I'm really tired, exhausted, and never want to see
15 these regulations again, and even though I checked
16 opposed in the form I filled out, and even though I have
17 real concerns, I do think it's time to put them out.

18 Staff has, there's been a world of difference
19 between this process and the process of a few years ago.
20 Staff has been really good at listening to many different
21 sides of the issues. I've had opportunities to speak on
22 the phone that I've never had in the past, with people
23 who actually had some input into the regs as opposed to
24 others, and I appreciate it.

25 I also believe that we could go on forever

1 because the sides are so far apart. And I thought the
2 LEA rep -- I thought Allison very well represented where
3 the three sides are in the discussion, and we're not
4 going to get off our sides.

5 And ultimately the decision has to be yours, and
6 it's time for it to go out for public comment.
7 Everybody's views to officially be on the record, instead
8 of informally, and for you to make a decision.

9 I would like to talk particularly about one big
10 change in this version that concerned me greatly given my
11 view, which is higher and better use of recycled
12 materials, and better, larger growth in the number of C&D
13 facilities.

14 It has to do with the definition. I feel very
15 badly, I spoke with a staff person, one of the Board
16 members about the definitions, and we spoke rather
17 narrowly on the separated for reuse and source separation
18 part of the definition. And I indicated I'd love to see
19 something in writing about why it was there. It was
20 explained at one of the workshops as a way of separating
21 C&D from the rest of MSW. It's used in a slightly
22 different way in the definition than it is usually used
23 when talking about recyclables.

24 But my concern has to do with the definition,
25 the current definition which I believe is overly

1 restrictive by any way of looking at it. In fact, I
2 would go so far as to say that in all of my experience
3 with C&D operations, recycling facilities, cities with
4 C&D ordinances, I have never ever been on a demolition
5 site and seen a load of demolition debris that could meet
6 this definition, it is that restrictive.

7 Now if what you wish to say is that
8 demolition debris should always go to a transfer station,
9 which is how this discussion started out in '98, that's
10 where the sides were, it should all be transfer station,
11 that's a different story.

12 But if we're talking about tiering, small,
13 medium, and large volume, then I think this definition
14 has gone to the other extreme, and I am extraordinarily
15 concerned that it will be the end of all of the
16 independent recycling facilities out there. Because in
17 my view the real issue is not health and welfare, I think
18 every one of us could compromise on health and welfare
19 issues, and reasonable people could compromise to ensure
20 that health and welfare is protected.

21 And I really liked the LEA's last suggestion,
22 the first speaker's last suggestion, I think that's an
23 excellent compromise for many of the concerns that Board
24 members and audience members have.

25 But the bottom line is most of this debate, and

1 the reason staff gets jerked to this side and this side
2 is because we're talking about control of the waste
3 stream, and whether independent haulers, construction
4 contractors, independent recyclers are going to get to
5 recycle the C&D, or whether it's all going to go to
6 landfills and transfer stations and be ground up as ADC.

7 A very biased view, I certainly represent one
8 extreme of the viewpoint, but I'm absolutely convinced of
9 it and I see it every day as I work with cities that have
10 C&D ordinances.

11 I have been to three meetings in the last two
12 weeks, every one of them has, the majority of people in
13 that meeting has argued for, "Hey, let's just stop
14 talking about processing facilities, we can send it all
15 to the local landfill, have it ground up, and use it as
16 ADC in any height needed because there will be no
17 oversight." And that concerns me. I see them as very
18 linked issues.

19 So I want to say that I hope that you will
20 listen to those three very extreme and different
21 viewpoints that Allison pointed out that she's been
22 hearing, and help us come to a compromise that maximizes
23 higher and better use as outlined in your strategy that
24 you've recently voted on, and maximizes independent, the
25 ability of independents to have access to and recycle

1 this waste stream, and equally protects the health and
2 welfare that is your responsibility.

3 Thank you.

4 BOARD CHAIR MOULTON-PATTERSON: Thank you. Mr.
5 Jones.

6 BOARD MEMBER JONES: Thank you, Madam Chair.

7 Ms. Evans, what in the definition of C&D here
8 that you say nobody will ever be able to work on a
9 construction site, point out to me what the problem is
10 for our Board?

11 MS. EDWARDS: Okay, definition. It says that it
12 means, "Source separators separated for reuse," and I
13 understand now that's meant to differentiate it from MSW,
14 "resulting directly from construction, remodeling,
15 repair, and demolition." So it has to directly come from
16 the operation of these activities.

17 It goes on to say that it includes only the
18 following items which meet the above criteria. And one
19 example I would give you is in 1.A. permanently installed
20 furnishings and other fixtures. Now when have we been to
21 a full demolition of a building and not seen some
22 furniture not permanently installed, or fixtures not
23 permanently installed? So that would be one example.

24 Going onto number two, "C&D debris expressly
25 excludes solid waste that does not result," again the

1 word directly has been inserted, "from construction work,
2 including but not limited to," and the examples they give
3 are employment, employee lunches, office recyclables.

4 Now, I'll give two examples to you. I did a
5 walk-through of a City of San Francisco office building
6 that the city is demolishing to build another one. And
7 in that building there was furniture that their salvage
8 department had determined that was not salvagable and
9 decided not to take it, it was not affixed to the
10 property. There were boxes of office paper, there were
11 at least 25 to 30 boxes of office paper scattered among
12 the, two of the floors, of documents they decided could
13 be disposed of but had not been when the building was
14 closed. That was in the walk-through, that is part of
15 the debris that is going to be carried out.

16 Lunches. Now when have we seen a debris box
17 that does not have the remains of a worker's lunch that
18 they brought from home or bought at McDonalds? It's
19 infinitesimal, but in this definition it is
20 extraordinarily strict.

21 I can see if we wanted, and someone told me that
22 two arguments had been made, one was that, "Well you can
23 get a separate bin." Well sure, even I would say to the
24 contractor, forget about recycling, if you've got a
25 remodel job and, poor guy, you've got to have a bin for

1 this and a bin for that and it's going to add a lot to
2 your cost, especially if it's a small remodel, how -- if
3 we're talking percentage and health and welfare, I
4 understand those issues. I like the issue of public
5 nuisance. But to say it is expressly excluded, which
6 opens the door for anyone to call an LEA and say
7 technically they're in violation, shut 'em down. That's
8 wrong. And that's where I think we need compromise.

9 And I get so passionate on this side of the
10 issue, I'm willing to compromise. But in a room it's
11 always me and the person who's on the opposite side of
12 the fence. You're the ones who have to bite the bullet.

13 BOARD CHAIR MOULTON-PATTERSON: Excuse me,
14 Senator Roberti has a question.

15 BOARD MEMBER ROBERTI: Are you opposed to the
16 regulations?

17 MS. EDWARDS: I said before that I checked
18 opposed but what I meant was I have problems with the
19 regulations which I'm willing to write up officially
20 during the comment period.

21 BOARD MEMBER ROBERTI: So I don't --

22 MS. EDWARDS: So I think there should be
23 regulations.

24 BOARD MEMBER ROBERTI: Your testimony has been
25 very interesting but I have no idea if you were asking me

1 how to vote how you want me to vote.

2 MS. EDWARDS: I'm sorry, I thought I said at the
3 beginning that I believe you should vote to issue these
4 for the 45 day comment period.

5 BOARD MEMBER ROBERTI: And yet you spent the
6 bulk of your testimony opposing them, however?

7 MS. EDWARDS: I spent the bulk of my testimony
8 expressing opposition to a very serious flaw in them that
9 I don't see any point in throwing back to staff. I think
10 that they are overwhelmed by listening to all of the
11 viewpoints.

12 BOARD MEMBER ROBERTI: With more friends like
13 you, the resolutions will go down shortly.

14 BOARD CHAIR MOULTON-PATTERSON: Thank you.

15 MS. EDWARDS: Thank you.

16 BOARD CHAIR MOULTON-PATTERSON: Patrick Munoz
17 followed by Kelly Ingalls.

18 MR. MUNOZ: I'm not sure what Senator Roberti
19 had for lunch, I'm a little nervous to testify after that
20 if I'm going to be the next person to be grilled.

21 Thank you again for taking the time to listen to
22 our comments.

23 BOARD MEMBER EATON: He's a vegetarian, he's
24 looking for meat.

25 MR. MUNOZ: I'm here on behalf of Madison

1 Materials which is a business that is in the C&D
2 recycling business. And I think it's important as you go
3 through your discussion today and your debate and your
4 consideration of this to think about where the comments
5 are coming from because it's an important part of all
6 this.

7 There's a big question I'm going to address in a
8 moment about the notification tier versus the
9 registration tier that's now come up. And especially in
10 connection with that issue, think about what is really
11 occurring. Are you being encouraged to adopt something
12 that's good for recycling that's within your purview, or
13 are you being asked to do something that has market
14 implications? There's an economic battle going on here
15 as well, and I would just encourage you to think about
16 that just as an opening statement.

17 I'm very encouraged to see the regulations in
18 the way they're drafted. I'm encouraged in the sense
19 that I see a lot of compromise here. And I'm an
20 attorney, and in any settlement or any compromise judges
21 always tell me it means that nobody is exactly happy, and
22 I see that happening here.

23 In our last discussion on this topic in San
24 Francisco I had suggested that perhaps some things could
25 occur to allow the mid-level to increase because of the

1 type of waste we're dealing with.

2 My suggestion and the one that I still would
3 love to see adopted would be to allow the one hundred ton
4 limit for the notification tier if there is no CEQA
5 process at a local level, and a five hundred ton limit if
6 there is a CEQA process. And my idea does not seem to be
7 adopted in the draft.

8 However, the registration tier, I think,
9 effectively accomplishes the same thing. It's more
10 regulation than we would have liked to have seen,
11 although it's less regulation than the MRF operators
12 would like to see. So I think that's a good compromise
13 because nobody's exactly happy.

14 And what we would like to see at this point is
15 just to move forward with the regulations as drafted,
16 with respect to that issue and all the other issues
17 except one, and it's the same issue that Ms. Edwards just
18 touched on.

19 I'm very concerned by the definition. I've
20 handed out a definition with my speaker request form that
21 I hope is in front of you all. It's what we would
22 propose that you adopt. And Senator, to address your
23 specific question, what I would like to see you do today
24 is to send these out for the 45 day comment period but to
25 substitute in the definition that I've provided to you in

1 exchange for the definition that's provided in this draft
2 regulation.

3 And the changes that I have proposed really come
4 down to one critical issue. And it's a philosophical
5 issue, I think, and the question is this, are we going to
6 deal with enforcement in the definitions? And I think
7 what you're really trying to accomplish here is an
8 enforcement issue.

9 The key to the definition I propose to you that
10 differentiates the waste we're talking about from the
11 general municipal solid waste stream is that I have
12 suggested that the waste that we're talking about must be
13 directly related to construction activities, which is
14 very close to what the staff has presented you with. In
15 fact, I've tried to be as true to the staff's definition
16 as I could and still accomplish that.

17 The one percent putrescible limit is a very,
18 very tight limit. One percent, I mean, you know, there's
19 not much less than that. If you're concerned by one
20 percent, you know, it's not on the table at any of the
21 discussions we've had, but go to half a percent. There
22 will be, however, incidental amounts of putrescible waste
23 that gets into this waste stream.

24 And I'm very concerned to hear staff's comments,
25 because I'm getting mixed messages. In speaking with Ms.

1 Reynolds I've been told that my concerns are maybe
2 overstated, that, you know, everybody recognizes there
3 will be some incidental amount of putrescible waste, and
4 that the one percent limit that's in the first part of
5 the newest definition is not eviscerated by the second
6 part of the new definition which says specifically it
7 includes the following things and it excludes the
8 following things.

9 And if that were the case I'd be okay, you know,
10 more or less with the definitions, there's some other
11 tweakings I'd like to see. But on this issue now we're
12 hearing that absolutely one hundred percent of the waste
13 must be C&D waste, there's no room for any incidental
14 waste. And that's a real problem. Because, how do you
15 prevent, you know, a worker from throwing their McDonalds
16 wrapper into the box?

17 Our goal is to run an operation that Mr. Jones
18 will one day say, "They're a good operator," you know,
19 that is our goal. We are not asking to not have
20 regulation. The registration tier is a tier that is a
21 compromise to us, but we're willing to live with that.

22 The inability, though, to have an infinitesimal
23 amount of residual that is putrescible and that is going
24 to be dealt with by the EA if we have a problem, if we
25 have too much, where we lose our ability to continue to

1 operate we'll have to get a full permit.

2 But enforcement is, I think, the key here.

3 Instead of trying to enforce the writing of these
4 definitions so tight that you can't have an apple core in
5 a load of wood, I think that some compromise needs to
6 occur.

7 And in fact, I'd like to point out that when the
8 one percent number appeared back in the Novemberish issue
9 of these drafts, that was a new item and we did not
10 oppose that, you know, even though it's more restriction
11 on our business, that's very reasonable. One percent is
12 more than we'll ever need in, when we operate our
13 business, far more than we'll ever need.

14 So I would encourage you to consider that in
15 your comments, and to also bear in mind the result if the
16 regulations, if the definition part of the regulation
17 stays the same, and that is to discourage recycling.

18 As an example, in this business my client
19 currently source separates, or really I guess it would be
20 more correct to call it separates for reuse on site.
21 They do put out a three yard bin, and a large bin for all
22 the real C&D waste. In that small three yard bin we
23 hope, we encourage will be the paper waste from the
24 office trailer on the construction site. We hope will be
25 the Carl's Jr. Wrapper. And that material would then go

1 either to a MRF or to a landfill or whatever's
2 appropriate.

3 And hopefully in our forty yard roll-off or
4 lowboy we have the real C&D material. It's cleaner for
5 us that way, and that way our costs of processing it are
6 far less. We prefer it that way.

7 The problem that we're faced with is an
8 ancillary problem to what you're dealing with. In the
9 City of Santa Ana we have a franchise to collect nothing
10 but construction demolition waste. If we take the extra
11 step and separate for reuse like we do now, but if your
12 definition is so narrow that that extra three yard bin is
13 no longer considered to be, you know, part of the
14 construction activities, it's directly related to the
15 construction activity. It's not going to go to our
16 facility, but it is directly related to construction
17 activity; all of the sudden if that's not part of the C&D
18 waste stream, it's part of the franchisee's waste stream
19 in that city. There's no point for us to put out that
20 extra bin anymore, all we're doing is opening the door to
21 lose the account because the local franchisee that has
22 all the commercial waste comes in and says you can't use
23 them for that three yarder, you've got to hire us for
24 that. So it has a negative impact on the beneficial
25 recycling efforts that you're pursuing.

1 That concludes my comments, thank you very much
2 for your consideration.

3 BOARD CHAIR MOULTON-PATTERSON: Thank you.
4 Kelly Ingalls followed by Greg Pirie.

5 And I'm, again, going to say we keep getting
6 slips, so we have a lot, so please be as concise as
7 possible.

8 MR. INGALLS: I will be. I'm Kelly Ingalls,
9 I'm the founding regional director of the Construction
10 Materials Recycling Association of Southern California.

11 Our members include facility owners, operators,
12 demolition and construction contractors, local
13 government, and industry associations.

14 The purpose of CMRA in general, and especially
15 our chapter, is to support C&D recycling and marketing of
16 recycled materials. And we do have a policy in CMRA to
17 oppose illegal operations and operations that would be a
18 threat to the health and safety of the public.

19 We support your adoption of these tiered regs.
20 I was on the working group that formed in 1998, I believe
21 it was, in 1998, so a lot has gone down since 1998. But
22 then again, a lot has changed since the draft of 12/5
23 2001.

24 So in the sense that we support your adopting
25 the regs and going forward with them, we need to, we do

1 have some opposition to some of the things that are in
2 the current set of the regulations. We don't support all
3 the provisions of the regs but, as they're currently
4 written.

5 We are going to have a meeting on January 30th,
6 Allison Reynolds will be there to make a presentation to
7 our members and participants so that we can get their
8 input on how these regs would affect them, because I know
9 that you did some stakeholder meetings but not all of our
10 people were there.

11 And we will provide written comments to you and
12 the Board after the input at the CMRA meeting during the
13 45 day comment period.

14 Just to go quickly, our areas of concern are
15 also with the definition. And I would be specific in
16 saying that in one sense the definition says that C&D is
17 only the following, and in another place it says it
18 includes but is not limited to. I don't think that you
19 can really look at construction and demolition and say it
20 only includes the following; you've got signage in here,
21 and any number of things that are in C&D, so that I think
22 is too limiting.

23 The second is the one percent putrescible
24 limit. I don't know what kind of reality check has been
25 done on that. I think that we need to hear from our

1 members in terms of that. I think it's too low.

2 If you have a five hundred ton per day facility,
3 that's five hundred tons per day you can have in
4 putrescibles, that includes wood waste, green waste,
5 cardboard, any number of things, isn't carpeting a
6 putrescible? So I just believe that that is something
7 that is going to be a problem and we need to look at it
8 more clearly.

9 We also need to review the storage limits. I
10 think generally that they're all right, but I'd like to
11 hear from our members as to whether that is something
12 that works for them, 30 days, 180 days, and that kind of
13 thing.

14 I'm a little confused with the scope of what is
15 a CDI in terms of storage limits because a facility, a
16 small facility could be receiving inerts and also getting
17 C&D. If it's inerts, that's something that can stay on
18 site after it's been processed for 180 days, and yet the
19 CDI limits are less, they are thirty days. So that needs
20 to be looked at in terms of the scope, whether it's
21 inerts or whether it's other materials.

22 One thing that's very important from not only
23 these tiered regs but experience with the Capilera east
24 end complex project that I worked on as a consultant is
25 we need a clear and realistic definition of what source

1 separated at the site means.

2 And at the Southern California stakeholder
3 meeting we had a demolition contractor that said we don't
4 source separate at the site, we don't put these materials
5 into separate bins, we bulldoze them, we make them as
6 small volumetrically as possible, and we send them off to
7 a recycling facility or to a landfill.

8 So there's a little problem I have with what
9 we're talking about with source separated at the site, I
10 think it needs to be clear and realistic.

11 I'm just going to skip ahead to beneficial
12 reuse. I saw that in there, i think that needs to be
13 examined too, because I don't believe we should call
14 beneficial reuse recycling in all cases. There are cases
15 where you're going to use materials for filling up an
16 inert fill that could have implications for localities
17 that are calling that recycling when right now it's
18 outside of the, outside of the scope of solid waste all
19 together.

20 I don't believe we should exclude governmental
21 agencies from the tiered regs. The City of L.A.
22 Department of Airports, Harbor Department, have large
23 piles of inert debris that they may have on site for any
24 number of years. I don't see why they're excluded, and
25 that is a whole conversation that can go on for a long

1 time.

2 One thing that I think you should watch out for
3 is the EA having the, the opportunity to approve
4 alternatives for some facilities. And you need to watch
5 out for that because it's going to be viewed as too
6 discretionary.

7 ABC Recycling Company gets an exemption, and DEF
8 Recycling Company doesn't, then they're going to say,
9 "Where's the fair playing field?" I would look very
10 carefully at that.

11 I would like to offer our assistance from CMRA.
12 If you have anymore questions or need any input from our
13 members. And thank you for moving this along, and we
14 will continue with our support.

15 Thank you.

16 BOARD CHAIR MOULTON-PATTERSON: Thank you. Greg
17 Pirie followed by Mike Schmaeling followed by Mark Aprea.

18 MR. PIRIE: Good afternoon, Greg Pirie, Napa
19 County LEA.

20 I think the main issue that I've been, not only
21 today but the last few months talking to staff about is
22 the enforcement, enforceability of the regulations.

23 It's come up throughout our roundtables in the
24 Bay Area with certain LEAs, and there's a real issue of,
25 more specifically with the one percent putrescibles, to

1 be able to come into, you know, there's kind of a
2 split-off between the facilities that could be, facility
3 operations, you know. It's easy to go in there, you have
4 your inspection sheet. You can go through a detailed
5 format of what would be a violation and what you can do.

6 And I think the problem right now is to where
7 you go into say a recycling center, this is a business, a
8 non-facility, non-operation, to where you have to go in
9 there, determine, you know, what is the putrescible
10 waste, and the main question that comes to that owner is,
11 okay, we have to get an example of what your putrescible
12 waste is, what's your percent. But right now there's
13 really no requirement in terms of what kind of records
14 they have to keep.

15 So to use the one percent as a tool is right now
16 quite difficult. And I've expressed that to staff, and
17 they've listened, you know, they've been great to work
18 with, and I will continue that. And that's the main
19 comment I have.

20 And also, just in general, whether it goes to 45
21 day or not, I just hope the intent would be to have a
22 regulation package that would really be useful to where
23 in two years we wouldn't be coming back and going over
24 the same options.

25 I mean as far as I'm concerned if we took

1 another six months but the package was perfect, or it's
2 not going to be perfect but good enough, that would be
3 awesome.

4 So thank you very much.

5 BOARD CHAIR MOULTON-PATTERSON: Thank you. Mike
6 Schmaeling.

7 BOARD MEMBER ROBERTI: Madam Chair.

8 BOARD CHAIR MOULTON-PATTERSON: Senator Roberti.

9 BOARD MEMBER ROBERTI: Just a comment, I woke up
10 on the wrong side of the bed, and I want to apologize to
11 Ms. Evans, she gave excellent testimony.

12 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
13 you, Senator.

14 Mike Schmaeling followed by Mark Aprea.

15 MR. SCHMAELING: I'm going to make it as quickly
16 as I can. Basically I'll mimic a lot of Justin's
17 comments.

18 The diversity of views amongst the LEAs is just
19 as diverse as the views amongst the three stakeholder
20 groups. The EAC has decided that they would like to see
21 it go for the 45 day comment period, it's time to settle
22 this issue and put it behind us. Staff has worked very,
23 very diligently trying to come to a compromise, sometimes
24 you guys just gotta make that big decision, so we leave
25 it in your hands.

1 Thank you very much.

2 BOARD CHAIR MOULTON-PATTERSON: Thank you.

3 Mr. Jones.

4 BOARD MEMBER JONES: Mr. Schmaeling, Schmaeling,
5 Mike.

6 The definition of C&D that's in the proposed
7 regs is very, very tight. But as an LEA, does it give
8 you the ability or does it take away? Do you know what
9 you'd be regulating when you go in and look at one of
10 these facilities?

11 MR. SCHMAELING: I feel so, yes.

12 BOARD MEMBER JONES: Okay. Thanks.

13 BOARD CHAIR MOULTON-PATTERSON: Thank you. Mark
14 Aprea followed by Chuck White.

15 MR. APREA: Madam Chair, members of the Board,
16 Mark Aprea representing Republic Services. I'd like to
17 first thank all of the staff that have spent a lot of
18 time. I thought the workshops were very useful in
19 getting a lot of the information out to folks, and also
20 to listen to what all the parties had to say.

21 To answer the question I know Mr. Roberti is
22 dying to know, and that is what is our position. And
23 that is we're opposed to these measures going out on the
24 basis that since the measures, that the regs that are
25 before you today are not close in our mind in terms of

1 where they ought to be, we would encourage further work
2 on them before they are released.

3 You know, there are certain things that are
4 constants in this world, and that is the sun is coming
5 up. And it appears, unfortunately, that Joan Edwards and
6 I are always on the opposite side of the spectrum.

7 But I want to bring to the Board's attention, as
8 we did in the workshops, our perspective on this issue.
9 Our views on these regulations are not just about
10 regulating these facilities, but where these facilities
11 play in the broader collection and processing of these
12 materials.

13 And that is that construction and demolition
14 waste, not debris as it's stated in the proposed regs,
15 are one of the great areas where we engage in people who
16 are violating, not only the terms and conditions of
17 franchise agreements that local governments rely on to
18 achieve their AB 939 goals as well as for purposes of
19 engaging in their local enforcement, but also from the
20 standpoint that these are, these facilities oftentimes
21 tend to be facilities that are abusive in terms of how
22 they go about complying with the regulatory process.

23 Staff indicated during the workshop that was
24 held up here that they estimate that there are forty or
25 fifty C&D facilities statewide that they're looking at,

1 and that the average intake at these facilities ranges
2 somewhere in four hundred to five hundred tons per day.

3 Now we might dispute whether that number is too
4 low in terms of the number of facilities. But what this
5 tells us is that the proposed regs before you today
6 ostensibly say that the vast majority of these facilities
7 will receive secondary and tertiary focus or priority as
8 far as regulation is concerned.

9 When you, by definition LEAs, this Board will
10 focus in on solid waste facilities and those that are at
11 the top of the tier. We are all measured by how well or
12 how poorly we focused in on the big issues.

13 To the extent that we have the vast majority of
14 these facilities in a lesser tier, we are in essence
15 saying that these facilities will receive a secondary or
16 tertiary priority.

17 I don't think that that's the kind of message we
18 want to send, particularly given the historical behavior
19 of many operators, not all, but many operators.

20 The adoption of these regs, in essence, is that
21 kind of public statement. We also asked the question of
22 those people who were opposed to lower thresholds in
23 terms of tonnage levels. What was the burden? How is
24 this going to displace workers? How was this going to
25 put them out of business or be burdensome?

1 Not one person at our workshop could raise a
2 single issue or example of how this was going to put a
3 burdensome regulatory framework on them, or what kind of
4 consequence it would have.

5 So therefore that discussion is, at least so far
6 as we can tell, is a non-issue in terms of whether it's a
7 regulatory, a registration tier or a full solid waste
8 facility permit.

9 Furthermore, the discussion, the dispute, if you
10 would, between the LEAs tells us that these proposed regs
11 fail to meet the clarity test. LEAs cannot agree on
12 whether or not they can enforce these, and I would submit
13 that from the operators standpoint I'm not sure we're
14 clear yet on where these regs go and how they're going to
15 operate.

16 Finally, as staff indicated up here, it is their
17 expectation that given the existing definition that there
18 would not be anywhere near the ten percent residual for
19 MSW or the one percent residual for putrescible waste.
20 And I would submit, therefore, that the thresholds then
21 that are in the proposed regs are way too high.

22 If the definition is such that the waste going
23 to these facilities ought to be, in fact, pure C&D if you
24 would, then the residuals of ten percent and one percent
25 are way too high. Because what you're really looking at

1 then is fifty tons per day times forty facilities of
2 unregulated waste or waste that is regulated at a lesser
3 tier.

4 Madam Chair, members of the Board, we would ask
5 that you not release these until they're done yet. We
6 don't think that these regs are ready for primetime.

7 BOARD CHAIR MOULTON-PATTERSON: Thank you.

8 Chuck White, followed by Donald Gamblin,
9 followed by Kelly Astor.

10 MR. WHITE: Madam Chair, members of the Board,
11 Chuck White representing Waste Management.

12 I addressed you today coming from the position
13 that we thought, and we could at one point in time take a
14 look at this idea of a registration permit for, within
15 the tiered permitting regulations. We were willing to
16 keep an open mind. We were a large company that was
17 willing to take a look at the viability of whether or not
18 there should be this registration tier.

19 But given this latest draft which in our view is
20 ever more complicated than the previous versions we have
21 previously seen, there is a number of what we believe to
22 be flaws in proceeding with this regulation to public
23 notice, not the least of which is they're very
24 complicated and difficult to understand.

25 Now the staff has done a good job in trying to

1 put language in that would separate municipal solid waste
2 away from the C&D waste. But does that mean that these
3 facilities that will be handling what is now considered
4 to be C&D waste or C&D debris would be the kind of
5 facilities you would want to take a less stringent
6 regulatory look at? And I ask you to consider the kind
7 of materials that are likely to be going through --

8 BOARD CHAIR MOULTON-PATTERSON: Senator Roberti.

9 BOARD MEMBER ROBERTI: Just for my interest, are
10 those distinctions some of the complications that you're
11 saying --

12 MR. WHITE: Well let me get, I'll expand on
13 those. My biggest concern is the kind of materials that
14 will be likely flowing through these kinds of facilities.

15 BOARD MEMBER ROBERTI: But those distinctions
16 themselves are not the complications that you're
17 concerned about that make this rendition more difficult
18 than the prior ones?

19 MR. WHITE: The prior ones were simpler in the
20 sense there were fewer tiers trying to figure out where
21 the different break points were between the various
22 regulatory structure.

23 Now you're going to, by providing these,
24 registration tier for example, think of the kind of
25 materials that will be flowing through a facility. Look

1 around the room you have here today, and the kind of
2 materials that are, that will be in the C&D waste.

3 BOARD MEMBER ROBERTI: Weren't those
4 registration tiers put in in order to accommodate some of
5 your objections, the opposition's objections?

6 MR. WHITE: I'm sorry, Senator?

7 BOARD MEMBER ROBERTI: Weren't those
8 registration tiers put in to accommodate some of the
9 objections to the opposition?

10 MR. WHITE: They were not.

11 BOARD MEMBER ROBERTI: The opposition --

12 MR. WHITE: We were fully supportive and we are
13 fully supportive of the November version, the November
14 13th, 14th, that did not have a registration. And we
15 were willing to take a look at putting, slotting in a
16 registration tier to accommodate some of the concerns
17 that were raised by other parties, but the registration
18 tier itself was not put in at our behest.

19 The things like mercury switches. The
20 Department of Toxic Substances Control has just gone
21 through an extensive notice of hearings up and down the
22 state expressing concerns about mercury. You have
23 mercury switches in this room. You have mercury probably
24 in the electric light bulbs, or if not other buildings
25 do. These are the kind of materials that will be flowing

1 through the C&D wastes. You've got industrial oils that
2 could be in ballasts, for example. Even old buildings
3 could have PCB ballasts in the lighting fixtures.

4 This is a technological marvel, you can't
5 imagine it ever being obsolete, this room, full of
6 electronic equipment and gear, but in a matter of time it
7 is going to be obsolete, and it is going to be subject to
8 renovation and reuse and we'll see materials pulled out
9 of this room, and the supporting rooms will become C&D
10 waste. This is E-scrap.

11 The Department of Toxics has just taken steps to
12 declare one form of E-scrap, CRTs, to be hazardous
13 waste. Now there's other forms of E-scrap that would not
14 surprise me in the least in the next few months or years
15 that the Department of Toxics will likewise declare as
16 hazardous waste.

17 Lead painted debris, that's a common problem,
18 maybe not in the new building, a room like this, but in
19 the older buildings they're extensively used, many layers
20 in cases of lead painted debris.

21 This is the kind of material that's going to be
22 processed through these facilities. Copper, chromium,
23 arsenate treated wood, that's wood preservative. We
24 understand that our good friend Senator Romero is likely
25 to propose legislation this year that will, in fact, ban

1 the sale and manufacture of CCA treated wood, and
2 completely ban the disposal of CCA treated wood. Yet
3 copper, chromium, arsenate would be handled by these
4 various C&D facilities.

5 So my point here is that there's a lot of
6 materials that are going to be flowing through these
7 kinds of facilities for which there is increasing
8 regulatory control and what will continue to be
9 increasing regulatory control in the upcoming weeks and
10 months and years.

11 Is this the kind, are these the kinds of
12 facilities you want to give less stringent, less
13 regulatory oversight and review? And if you do, I just
14 ask you to seriously consider the kind of materials that
15 these facilities will likely be handling.

16 Now we thought that there might be merit to a
17 registration tier if it could be made consistent with the
18 transfer station regulations, but we don't believe that
19 that gap has been adequately bridged in the current
20 proposal that you have before you today.

21 In addition, there's some new language that's
22 been added to seem to restrict the tonnage limits on
23 solid waste facilities that may also start C&D operations
24 which has given us some concern.

25 And as I started off, these regulations are much

1 more confusing with the multiple tiers, the increased
2 definitional language, and the problems we have of the
3 kinds of materials that are likely to be flowing through
4 these kinds of facilities.

5 So we ask you to go ahead with the public
6 notice, but not public notice the ones you have in front
7 of you today, go back to the version that you had on
8 November 13th and 14th, and send those out for public
9 notice. And if a credible argument can be made during
10 the 45 day period that the registration permit tier is
11 appropriate for handling the kind of materials that are
12 likely to come out of a room like this, and be processed
13 at a lower level of regulation than a full permit, then
14 give it ample consideration.

15 If you do go out to public notice either with,
16 well as we request with the November 13th, 14th version,
17 we would ask that you change the term from C&D debris to
18 C&D waste in the definition. The definition of solid
19 waste in the Public Resources Code makes specifical
20 reference to construction and demolition wastes, and we
21 believe that the, in order for these regulations, in no
22 matter what form they take, to be consistent with the
23 Public Resources Code, you should use the same terms that
24 are in the Public Resources Code which is not C&D debris,
25 it's C&D wastes.

1 Thank you.

2 BOARD CHAIR MOULTON-PATTERSON: Thank you. We
3 will be taking a ten minute break right now.

4 (Thereupon there was a brief recess.)

5 BOARD CHAIR MOULTON-PATTERSON: Okay. Again,
6 we keep having these speaker slips come in. Please say
7 if you support or do not support us going out. And
8 please, please be concise, because we have members that
9 have to leave and I'd like to have everyone be able to
10 vote on this or give their direction.

11 Donald Gamblin, followed by Kelly Astor, and
12 followed by Larry Sweetser.

13 MR. GAMBLIN: Donald Gamblin, NorCal Waste
14 Systems. We support, as Waste Management stated, that
15 the November version of the proposed regulations be sent
16 out for review.

17 Let me just put forth a couple of ideas to keep
18 in mind. These types of facilities, C&D recycling
19 facilities, they're typically located in various regions
20 of cities and outlying areas that are not what I would
21 call prime real estate areas, they're industrial areas,
22 they're degraded areas, and they're the areas that
23 typically need to be aware of environmental and health
24 and safety factors, and for those factors to be
25 considered in any operation of such a facility.

1 Unfortunately, with a registration level permit,
2 you don't necessarily need a CEQA environmental analysis
3 as conducted at any level. Obviously in order to get
4 that registration level permit, it's an administrative
5 action at the Board level or the LEA level, and therefore
6 is not subject to the requirements of CEQA under that
7 condition.

8 Also, locally I will say that although the staff
9 has said otherwise, that CEQA is normally taken care of
10 at the local level, that's not necessarily always the
11 case. Some of these types of facilities are permitted
12 and conforming uses with local zoning ordinances, and
13 therefore would not require any sort of action at the
14 local level, therefore no CEQA compliance or no CEQA
15 analysis does take place.

16 Now I, for instance, have a couple of facilities
17 that I've worked to permit that are C&D recycling
18 facilities that did go through the full permit process
19 and environmental analysis. And there were
20 considerations in those environmental analyses that were
21 potential health and safety and environmental
22 Implications. Those need to be addressed.

23 Unfortunately, with the reg package you have
24 before you they may not be if that registration permit
25 level is kept at five hundred tons per day facility. So

1 we would support the November version.

2 Let me liken this to a transfer station
3 operation. If I had a transfer station operation and I
4 wanted to increase its throughput or intake by five
5 hundred tons per day, and that five hundred tons per day
6 additional material was strictly C&D, I would have to
7 revise my full solid waste facility permit even though
8 the additional material is just five hundred tons per day
9 of C&D. I wonder, I'm questioning how that would be fair
10 and equitable to the facility that could just simply
11 start up at five hundred tons per day and obtain a
12 registration level permit without any sort of analysis
13 when we certainly would be subject to something
14 different.

15 If I can just combine a couple of thoughts that
16 I've heard from both Mark Aprea and some of the, as they
17 call themselves, small C&D recyclers. They've stated
18 that they've asked for simplification in the regs, that
19 they're very difficult to comply with. I've heard the
20 LEAs also ask for the same in order to make them
21 enforceable and for them to be able to enforce them. And
22 then Mark Aprea, representing Republic, also stated that
23 even though in the workshops there were claims of a
24 burdensome level of regulatory requirements and
25 permitting requirements that these so-called small

1 recyclers would be faced with, those claims were not
2 supported when asked directly.

3 So what this really points to in order to, I
4 think, provide the simplification and also have a
5 consistent permitting process and permitting requirements
6 and level playing field regardless of size, regardless of
7 franchise or contract or not or, you know, open and free
8 hauler, let's just go to something that's really similar
9 to the transfer processing regs. We have that in the
10 November version of these regs.

11 Thank you.

12 BOARD CHAIR MOULTON-PATTERSON: Thank you.
13 Kelly Astor, followed by Larry Sweetser, followed by
14 Chuck Helget.

15 MR. ASTOR: Thank you, Madam Chair and members.
16 Kelly Astor for the California Refuse Removal Council.

17 Our organization also supports the release of
18 regulations, but not the package before you today. As
19 with some of the other speakers who preceded me, we are
20 more supportive of the November version of the discussion
21 grid and related regulations.

22 A couple of comments I want to make which I
23 haven't heard yet from other speakers. I want to take
24 this opportunity to remind all of you that our trade
25 organization is comprised not just of large companies but

1 large and small, and sometimes issues like this get
2 characterized as the large versus the small operators.

3 I'm here to tell you today that we have plenty
4 of small operators who are perfectly willing to secure
5 permits to do this kind of work. So it's not a question
6 of large versus small, anymore than it's a question about
7 whether or not recycling of C&D materials is going to
8 occur. It's not all going as ADC in the landfill.

9 Plenty of people that are in our trade
10 association now are recycling this material and are
11 perfectly willing to secure permits. It's a question of
12 whether or not their shortcut to the permit process is
13 merited by down tiering to either registration or
14 something below, perhaps EA notification.

15 And that case has not been made, at least to my
16 satisfaction or the satisfaction of my board. If we're
17 going to shortcut the process and allow this activity to
18 occur without the necessity of securing a full solid
19 waste facility permit, then it seems to me the burden is
20 on those folks who seek to avoid obtaining a permit to
21 demonstrate that there isn't an associated environmental
22 health or safety risk, and they haven't done that.

23 I think Mr. White very eloquently testified a
24 moment ago about many of the potentially hazardous
25 constituents that typically are found to comprise part of

1 the construction demolition waste stream.

2 And a facility that is going to be inspected
3 less frequently and has an allowance of up to some five
4 hundred tons per day of material is not a facility that
5 merits escaping a permit when those kinds of materials
6 are going to pass through it.

7 So the CRRC recognizes a lot of staff time has
8 been put into this. Everybody is trying their best.
9 Joan Edwards got part of it right, we are at different
10 ends of the spectrum in terms of our view of this. So we
11 support the idea of locking in a set of proposed
12 regulations that go out to formal comment, but our
13 concern is you got the wrong set in front of you.

14 Having said that, the piece that Mr. Munoz, on
15 behalf of Madison Materials doesn't like, I'm in love
16 with. I like a very restrictive definition. Again, if
17 you're going to make the case that you deserve something
18 less than a full permit, then you ought to be willing to
19 submit, in my judgement, to a highly restrictive
20 definition. It says you're not going to do things you
21 shouldn't be doing.

22 With that, we appreciate your time. I'm
23 available for any comments or questions rather that you
24 have, but please consider very seriously the possibility
25 of issuing the November matrix grid out as part of your

1 reg package, because that's within your power to do today
2 as I understand it.

3 Thank you.

4 BOARD CHAIR MOULTON-PATTERSON: Larry Sweetser,
5 followed by Chuck Helget, followed by NorCal Waste
6 Systems, I think it's Denise.

7 MR. SWEETSER: Good afternoon, Madam Chair,
8 Board members. My name is Larry Sweetser on behalf of
9 the Rural Counties Joint Powers Authority.

10 I'll be real brief. We just wanted to say thank
11 you to staff, and particularly to Allison Reynolds for an
12 issue that we worked on with her, and it's working along
13 pretty well, and we just want to say thank you.

14 BOARD CHAIR MOULTON-PATTERSON: Thank you.
15 Chuck Helget, followed by Denise Delmatier,
16 followed by the last speaker, Evan Edgar.

17 MR. HELGET: Madam Chair and members of the
18 Board, I'm Chuck Helget, representing Allied Waste.

19 We also support noticing the November draft of
20 the C&D processing regs. We acknowledge that the January
21 draft that you had before you today contains an improved
22 definition of C&D waste as we prefer to see it, however
23 this draft also contains provisions that we believe still
24 have not been vetted properly and need additional
25 discussion.

1 If there are any questions I'd be happy to
2 answer them, otherwise thank you.

3 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
4 Helget.

5 Dennis Delmatier followed by Evan Edgar.

6 MS. DELMATIER: Madam Chair, members of the
7 Board, Denise Delmatier with NorCal Waste Systems.

8 I apologize for not putting my name on the slip,
9 a slight oversight. Just one quick point, and I've been
10 designated by industry, the solid waste industry to make
11 this point.

12 We believe that the process that we experienced
13 in moving the permit enforcement policy regulations,
14 emergency regulations and the regular regulations through
15 worked very well. And that process established a
16 subcommittee of Board members who worked with all
17 stakeholders in developing a final package. We thought
18 that worked very, very well.

19 And so we would encourage the Board to, in a
20 complex, controversial regulatory package as that was and
21 this is, we would encourage the Board two once again
22 establish a subcommittee of Board members to work with
23 stakeholders and staff in developing this package.

24 Thank you.

25 BOARD CHAIR MOULTON-PATTERSON: Thank you.

1 Evan Edgar.

2 MR. EDGAR: Madam Chair and Board members. My
3 name is Evan Edgar, Edgar Associates on behalf of CRRC.

4 I'd like to submit into the record a letter from
5 the solid waste industry that kind of consolidates all
6 the questions and points out in detail about why we
7 support the November 12th and 13th package, and how we
8 support the subcommittee, how the waste densities don't
9 justify going to five hundred tons a day, and even about
10 the universal waste issue that Waste Management brought
11 about, what is C&D.

12 So inside this package is a nice eight page
13 letter, I know you can't read it today, so to put it in
14 record I'd like to submit it and recognize that this
15 package is about quality control not about flow control,
16 that's a major difference.

17 Thank you.

18 BOARD CHAIR MOULTON-PATTERSON: Thank you. Who
19 is Jeff Kroeker?

20 Okay. Could you come up very quickly, you got
21 the slip in late, I'd like to give my Board members a
22 chance to discuss this before they have to leave.

23 MR. KROEKER: Fine.

24 BOARD CHAIR MOULTON-PATTERSON: Thank you.

25 MR. KROEKER: Good afternoon, I'm Jeff Kroeker,

1 Kroeker Demolition and Recycling.

2 There was a question on one of the photos that
3 was submitted up there, and we did weigh the C&D debris,
4 that was actually one hundred tons. We loaded it onto
5 the truck, put it on the scale, and then placed it on the
6 slab.

7 BOARD CHAIR MOULTON-PATTERSON: Okay.

8 MR. KROEKER: So I would like to --

9 BOARD CHAIR MOULTON-PATTERSON: Thank you.
10 Thank you for offering that, I appreciate it.

11 BOARD MEMBER ROBERTI: Madam Chair.

12 BOARD CHAIR MOULTON-PATTERSON: Senator Roberti.

13 BOARD MEMBER ROBERTI: First I would like, first
14 I would like to make the motion that we go out for the 45
15 day comment period on the proposed regulations as
16 presented before us. I think that will give everyone,
17 specifically the opposition, I guess of all types, the
18 chance to try to make improvements on those regulations.
19 But at some point we have to cut to the chase, and this
20 thing has been going on for a long, long time.

21 And in my mind we're trying to protect the
22 public, number one. But secondarily we want to make sure
23 that our regulatory system is not used for processes that
24 restrict the ability of small businesses to compete.

25 And I said it before at one of my first

1 meetings, one of the problems with 939, which I think was
2 a great piece of legislation, but one of the problems is
3 that we didn't foresee that the regulatory system in some
4 ways was going to freeze out small haulers. Now many of
5 them weren't complaining because they sold out very
6 nicely.

7 But the fact of the matter is that we restricted
8 competition, and I don't want to see our regulatory
9 system do that.

10 So I think staff has done an excellent job. I
11 criticized staff earlier, I mean rather yesterday, so I
12 want to say I think they've done an excellent job in
13 really trying to wend their way through really the
14 whirlwind and the rocks of a very difficult issue.

15 What many of the large C&D operators are trying
16 to point across to us is that yes, we have a duty to
17 regulate; but what many of the small operators are trying
18 to point out to us is we shouldn't repeat past mistakes
19 and freeze them out, and in effect freeze out the very
20 kinds of businesses that we're trying to encourage.

21 I think staff's done an excellent job on tough,
22 tough regulations. And that doesn't mean there may not
23 be changes, but we have to at some point move forward,
24 and so I would like to make that motion.

25 BOARD CHAIR MOULTON-PATTERSON: Okay. I'm not

1 sure if we need a motion or if we can just take
2 direction.

3 BOARD MEMBER ROBERTI: We don't need a motion,
4 okay, fine.

5 BOARD CHAIR MOULTON-PATTERSON: But I want to
6 give others a chance to speak. I think I also would like
7 to compliment staff, I think you've done a terrific job
8 on trying to get a fair document.

9 If we go out for the 45 day period, please put
10 your comments in writing and submit them.

11 Mike, Mr. Paparian, did you want to add anything
12 to this or did you want to speak?

13 BOARD MEMBER PAPARIAN: Yeah, just briefly. I
14 agree it's time to move forward and, you know, if we've
15 still got issues I'm sure we'll have a very long hearing
16 after the 45 day comment period trying to address some of
17 them.

18 One of the things I wanted to just flag and I
19 want to look into this some more. Even the one percent
20 putrescible gives me a little bit of concern. One
21 percent of five hundred tons would be five tons, that's a
22 lot of McDonalds wrappers. It's also, and Mr. Singh is
23 here, I think he'd probably argue that's about 30 or 40
24 three yard bins, Mr. Jones would probably argue that's
25 about ten or fifteen three yard bins if I'm calculating

1 that right, but that's still a bunch of three yard bins
2 of putrescible waste that could get mixed in here. And
3 it's something I think we want to just make sure doesn't
4 happen, at least in terms of traditional garbage getting
5 mixed in any way in this stuff.

6 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones and
7 then Mr. Eaton.

8 BOARD MEMBER JONES: Thanks, Madam Chair. I
9 want to thank staff. They were very responsive, I think,
10 to an awful lot of the concerns. I went ballistic at the
11 briefing because I understood a very different pattern in
12 San Francisco than what was actually proposed.

13 And I actually think that I've heard arguments
14 that this is going to hurt people that recycle. I'm
15 going to tell you something, it shouldn't. Because if
16 you're a C&D recycler and you're going to pull it out of
17 a construction site, and you can take everything out of
18 that construction site, that should be exactly what you
19 take.

20 It was funny today, I had an ex parte that I
21 listed earlier, and one of the arguments was maybe the
22 stuff won't get recycled, maybe it will just go to the
23 landfill. And I said well at that point then this Board
24 is going to take its action against the city, and the
25 city is going to have to make sure that haulers are

1 recycling. And the answer was, or we could go out and
2 get a new generation study and be in compliance.

3 It scares me when that's the type of attitude
4 that's prevalent, and we already know about a lot of
5 those issues. So this, I think, tightens it up, and I do
6 think that we need to look at a direct linkage in
7 enforcement that if somebody that says they're a C&D
8 recycler can get into this easier tier to deal with, is
9 found by an LEA to be breaking those rules, then it
10 should be automatic that they have to apply for a full
11 solid waste facility permit.

12 Because this is to make their lives easier. And
13 if they take advantage of it there has to be a real
14 remedy for LEAs to be able to do that.

15 And the industry that is objecting that I came
16 from is the industry that built the infrastructure to
17 meet AB 939. So they obviously have a stake in making
18 sure that the rules that they play by are consistent.

19 So I support these going out for 45 days, but
20 I'm real serious about this, about the enforcement being
21 swift.

22 And we've got some loopholes in the exclusions
23 under inerts that people can now say they're not a C&D
24 recycler, they're an inert recycler, and then you're back
25 to ten percent residual, and ten percent of the five

1 hundred tons is fifty tons of garbage. So --

2 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
3 Jones.

4 Mr. Eaton.

5 BOARD MEMBER EATON: Madam Chair, I just hope
6 when these come back, because it's fairly clear that this
7 version will go out, that we can have some sort of
8 clarity as to what the differences were as they start
9 talking about versions. Because some of the comments
10 were coming in that, you know, that they wanted to
11 support the other, and for us I think just in the work it
12 might be helpful to somehow get some distinguishing
13 features to those that will, you know, provide
14 simplification at least, not only to us as the Board but
15 I think to the public as well.

16 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
17 Eaton.

18 Mr. Medina.

19 BOARD MEMBER MEDINA: Yes, I also support the
20 regulations going out for 45 days. I know that there was
21 a lot of input from both sides that staff carefully
22 listened to and worked into what's being proposed, and I
23 also will say that this is, there's no differential
24 impact between the large and the small operators.

25 I do agree with Senator Roberti that we have to

1 be sensitive that we don't, you know, regulate how the
2 small operates.

3 BOARD CHAIR MOULTON-PATTERSON: Thank you. So
4 we will go out for the 45 days. And that takes us to
5 item 50.

6 MS. NAUMAN: Item 50 is consideration of a --

7 BOARD MEMBER EATON: Would that be when they
8 come back to El Centro? We can bring 'em all down
9 there.

10 MS. NAUMAN: We'll have to count the days.

11 All right. Item 50, consideration of approval
12 to notice a fifteen day public comment period for
13 revisions to the proposed regulations for hazardous waste
14 disposal facilities disposing non-hazardous,
15 non-putrescible, industrial solid waste.

16 Virginia Rosales will present.

17 MS. ROSALES: Good afternoon, Madam chair, Board
18 members.

19 In March, 2001, the Board approved the formal
20 noticing of the proposed regulations. The proposed
21 regulations were noticed for the 45 day public comment
22 period on October 26th, 2001. The comment period
23 concluded December 12th, 2001, at 5:00 p.m.

24 In summary, at the December Board meeting, two
25 industry representatives provided comments relative to

1 the financial assurance requirements, and placing a limit
2 on the amount of hazardous waste received under the
3 registration permit.

4 Consequently the Board directed staff to remove
5 portions of the proposed financial assurances and
6 operating liability requirements found in Section 17371
7 on page seven of the proposed regulations.

8 Just to make sure that we're all on the same
9 page here, I think a new, or you should have just
10 received a new revised attachment one. Yesterday we had
11 submitted a revised attachment one which are rescinding,
12 that's currently posted on the Web site, and we will
13 update that as soon as possible with this version you
14 have in front of you.

15 Based upon the direction of the Board at last
16 month's meeting, these revisions have been made. On page
17 seven of the proposed regulations we are proposing to
18 delete Section 17371.

19 Then under Section 18225 on page eight, the
20 requirements for the co-disposal plant, which is a
21 component of the application, we are proposing that the
22 operator provide written verification of compliance with
23 DTSC closure, post closure maintenance plan requirements,
24 and written verification of compliance with DTSC's
25 financial assurances and operating liability

1 requirements.

2 Finally, under Section 17369 on page five, we
3 are proposing that the LEA obtain written verification
4 from Board staff of the correctness of the operator's
5 application relative to the documentation the operator is
6 to include in the co-disposal plan that addresses
7 compliance with DTSC's closure, post closure maintenance
8 plan requirements, and financial assurances, and
9 operating liability requirements.

10 In regards to the issue of placing a limit on
11 the amount of non-hazardous waste received under the
12 registration permit, staff discussed this issue early on
13 with DTSC, the LEAs, and industry representatives, and
14 are unable to determine a public health or safety or
15 environmental basis to support a limit, to support a
16 limit on the amount of non-hazardous waste received at
17 these hazardous waste facilities.

18 However, the Board directed staff to provide a
19 summary of the amount of waste received at these two
20 facilities which hold the registration permit. The only
21 information available at this time is for the period of
22 October, 2000, when the emergency regulations took effect
23 through December, 2000.

24 The tonnage for the 2001 must be reported to the
25 LEA and the Board by March 1st pursuant to the emergency

1 regulations. These regulations, emergency regulations
2 are in effect through April 11th, 2002.

3 The tonnages received at these two facilities
4 are as follows: At the Safety-Kleen facility in Kern
5 County they receive 49,343 tons of non-hazardous waste,
6 and 19,139 tons of hazardous waste.

7 At the waste management facility in Kings
8 County, they received approximately 18,639 tons of
9 non-hazardous waste, and approximately 238,966 tons of
10 hazardous waste.

11 In conclusion, staff recommends the Board
12 approve noticing the revisions to the proposed
13 regulations for an additional fifteen day public comment
14 period.

15 BOARD CHAIR MOULTON-PATTERSON: Thank you. Any
16 questions before we have one public speaker?

17 Okay. Chuck White.

18 MR. WHITE: Thank you, Madam Chair and members
19 of the Board. Chuck White with Waste Management.

20 I'll try to be very brief. I had hoped to come
21 and give testimony to be fully in support. I know the
22 staff has been working hard, we've been exchanging
23 e-mails. And actually over the weekend I received a
24 proposed version that I thought was just fine and was
25 really satisfactory in addressing our concerns.

1 I just, when I got here this afternoon I just
2 got a brand new version that may be okay, but I'd like to
3 reserve judgment to take a look at it. And it really is
4 on page five of eight in the new one that just got handed
5 out, lines four through six.

6 One of the changes was, is the EA now is
7 responsible for us to verify that we're in compliance
8 with the closure and post closure and financial
9 assurance, which we believe to be totally appropriate.
10 And we certainly believe it's EA's, certainly within
11 their authority, we would hope they would pursue
12 verifying anything that we submit to them as correct.

13 But these sentences here, "The EA shall obtain
14 written verification from the Board staff that --" the
15 sections that basically refer to the DTSC regulations
16 that our verification is correct -- "prior to the
17 determination of a complete and correct application."

18 I don't have any problem with staff verifying,
19 or the LEA verifying at any time whether before or after,
20 but I would hate to have a permit held up for some reason
21 if the verification hasn't come through. It's out of our
22 control, we've done everything we can do. We'll submit a
23 verification, we'll go through in extensive detail
24 showing we're in compliance, but if we are unable to get
25 a verification back from Board staff to the EA, this will

1 hold up the permit for an undetermined period of time.

2 So my initial reaction to this language is I'd
3 request you to just simply drop that phrase, "prior to
4 the determination of a complete and correct
5 application." That is, you know, require the EA to seek
6 a confirmation that what we verified is correct at any
7 point in time, but not just prior to issuing the permit.
8 And not in such a way that you can conceivably hold up
9 the permit longer than would be normally required in the
10 regulations.

11 And also I'm wondering if it's really
12 appropriate for the Board staff to be verifying our
13 verification of compliance with DTSC regulations.
14 Perhaps the EA ought to be seeking verification from DTSC
15 that what we verified is correct and true to the
16 regulation. And I would certainly support them doing so
17 at any point in time.

18 Thank you very much.

19 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
20 White.

21 Any comment?

22 MS. NAUMAN: It was true we just kind of crafted
23 this last version, and Mr. White has not had an extensive
24 period of time to look at it. We're just trying to
25 finetune. We've been in consultation with our legal

1 staff, and we're just trying to ensure that in our effort
2 to defer to DTSC, as you've directed us, that we're sure
3 we're still dotting the I's and crossing the T's, and
4 assisting the LEAs who generally are not involved in
5 financial assurance, closure, post closure review. So it
6 was not meant to thwart in any way the Board's direction,
7 but just kind of nail down the Board's process.

8 So it still is a fifteen day comment period, and
9 we'd be certainly happy to continue to work with Mr.
10 White and others during that comment period to finetune
11 any further. But we're just trying to get, you know, as
12 close as we can to what everyone's objective is.

13 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.
14 Nauman.

15 Any comments from the Board? Mr. Paparian.

16 BOARD MEMBER PAPARIAN: Well I was just going
17 to suggest, you know, it is a fifteen day comment period,
18 and comments I'm sure will be welcome during that
19 period. I don't think we need anything else.

20 BOARD CHAIR MOULTON-PATTERSON: Okay. So
21 without hearing any other comments from the Board we'll
22 go out for the fifteen day comment period.

23 MS. NAUMAN: Thank you.

24 BOARD CHAIR MOULTON-PATTERSON: Okay.

25 MS. NAUMAN: That completes the P and E section.

1 BOARD CHAIR MOULTON-PATTERSON: This brings us
2 to Mr. Schiavo and item 29.

3 MR. SCHIAVO: Okay. Pat Schiavo of the
4 Diversion, Planning, and Local Assistance Division.

5 Item number 29 is consideration of staff
6 recommendation regarding the completion of compliance
7 order IWMA-BR99-64 in consideration of staff
8 recommendation on the 1997-98 biennial review findings
9 for the source reduction and recycling element and
10 household hazardous waste element for the Lassen Regional
11 Solid Waste Management Authority.

12 And Jill Simmons will be making this
13 presentation.

14 BOARD CHAIR MOULTON-PATTERSON: Mr. Schiavo, I
15 did want to let you know that at 4:00 o'clock we will be
16 taking a short break to change court reporters, so we'll
17 be working around that.

18 MR. SCHIAVO: Okay.

19 BOARD CHAIR MOULTON-PATTERSON: Ms. Simmons.

20 MS. SIMMONS: Thank you. Good afternoon, Madam
21 Chair and members of the Board. I'm Jill Simmons with
22 the Office of Local Assistance.

23 In September of 1999 the Lassen Regional Solid
24 Waste Management Authority was issued a compliance order
25 to implement additional or expand existing source

1 reduction and recycling programs. The authority and Board
2 staff then worked together to establish a work plan.

3 The authority has successfully implemented all
4 of the programs in their work plan. One thing to
5 mention, the government procurement policy was submitted
6 to the Lassen County Board of Supervisors and the City
7 Council prior to the July 31st, 2001 due date for
8 approval. However, for various reasons the policy was
9 not approved until December of 2001.

10 Additionally, I would like to mention that the
11 Authority fully implemented a commercial and residential
12 curbside recycling program, going beyond the stipulations
13 identified in their work plan.

14 I would like to thank the Authority for putting
15 these programs in place. It is staff's recommendation
16 that the Board remove the Lassen Regional Solid Waste
17 Management Authority from compliance order IWMA 99-64,
18 and accept the 1997-98 biennial review findings.

19 This completes my presentation. Are there any
20 questions?

21 BOARD CHAIR MOULTON-PATTERSON: Any questions?
22 Board members?

23 Mr. Jones.

24 BOARD MEMBER JONES: Thank you, Madam Chair.

25 I'll move adoption of Resolution 2002-45, consideration

1 of staff recommendation regarding the completion of
2 compliance order IWMA BR99-64 and consideration of staff
3 recommendation on the 1997-98 biennial review findings
4 for the SRRE and HHWE for Lassen Regional Solid Waste
5 Management Authority.

6 BOARD MEMBER MEDINA: Second.

7 BOARD CHAIR MOULTON-PATTERSON: Okay. Motion by
8 Mr. Jones, seconded by Mr. Medina to approve Resolution
9 2002-45.

10 Please call the roll.

11 BOARD SECRETARY VILLA: Eaton?

12 BOARD MEMBER EATON: Aye.

13 BOARD SECRETARY VILLA: Jones?

14 BOARD MEMBER JONES: Aye.

15 BOARD SECRETARY VILLA: Medina?

16 BOARD MEMBER MEDINA: Aye.

17 BOARD SECRETARY VILLA: Paparian?

18 BOARD MEMBER PAPARIAN: Aye.

19 BOARD SECRETARY VILLA: Roberti?

20 (Not present.)

21 BOARD SECRETARY VILLA: Moulton-Patterson?

22 BOARD CHAIR MOULTON-PATTERSON: Aye.

23 Item number 30.

24 MR. SCHIAVO: Item number 30 is consideration of
25 of the staff recommendation to change the base year to

1 1999 for the previously approved source reduction and
2 recycling element, and consideration of the 1997-98
3 biennial review findings for the source reduction and
4 recycling element and household hazardous waste element
5 for the City of Sierra Madre, Los Angeles County.

6 And Kaoru Cruz will be making this presentation.

7 MS. CRUZ: The City of Sierra Madre found that
8 it could not accurately calculate their 1997 and 1998
9 diversion rate with the current 1990 diversion, I'm
10 sorry, 1990 base year. Therefore, the city volunteered
11 to conduct a new waste generation study and submit a new
12 base year request to the Board.

13 The city has completed their new base year, new
14 waste generation study, and has requested a new 1990 base
15 year.

16 The city originally submitted a new base year
17 change request with a diversion rate of 29 percent for
18 1999. As part of the base year study review, Board staff
19 conducted a detailed site visit and carried out
20 additional research into the diversion activities.

21 Deductions that were recommended include
22 cardboard, produce trimmings, composting, cooking oil,
23 rendering, and plastic bag recycling at some businesses
24 are reduced because Board staff verified a lesser amount
25 of diversion from these businesses.

1 Cardboard and glass recycling was deducted from
2 one business because that business places these items in
3 the residential recycling containers and the material was
4 already counted once.

5 Some materials, metals and inert materials were
6 deducted because they failed to show that they meet the
7 restricted waste criteria.

8 The summary of all of the proposed changes as a
9 result of the site visit is found in attachment three.

10 With all of the Board staff recommended changes,
11 the city's diversion rate for 1992 be 27 percent.

12 Based on this information, Board staff is
13 recommending option two of the agenda item which would
14 approve the revised base year change with staff
15 recommendation, and accept the 1997-1998 biennial review
16 findings.

17 A representative from the city are present to
18 answer any questions.

19 This concludes my presentation. Thank you.

20 BOARD CHAIR MOULTON-PATTERSON: Thank you.

21 Questions?

22 Mr. Jones.

23 BOARD MEMBER JONES: One question, Madam Chair.

24 Did the disposal number come out of the DRS? There was
25 some discussion about self-haul and other stuff on page

1 30-11, all the tons are claimed from disposal, okay, so
2 there was no extrapolation or anything, this was all? Do
3 you know what percentage was self-haul, I didn't see it,
4 but about?

5 MS. MORGAN: No, I don't believe that we know
6 what percentage is self-haul.

7 BOARD MEMBER JONES: Was it significant?

8 MS. MORGAN: No.

9 BOARD MEMBER JONES: Okay. Madam Chair.

10 BOARD CHAIR MOULTON-PATTERSON: Yes, Mr. Jones.

11 BOARD MEMBER JONES: When I find it -- okay.

12 I'll move adoption of Resolution 2002-46,
13 consideration of staff recommendation to change the base
14 year to 1999 for the previously approved SRRE and
15 consideration of the '97-'98 biennial review findings for
16 the SRRE and HHWE for the City of Sierra Madre, L.A.
17 County.

18 BOARD MEMBER MEDINA: Second.

19 BOARD CHAIR MOULTON-PATTERSON: Motion by Jones,
20 seconded by Medina to approve Resolution 2002-46. Please
21 call the roll.

22 BOARD SECRETARY VILLA: Eaton?

23 BOARD MEMBER EATON: Abstain.

24 BOARD SECRETARY VILLA: Jones?

25 BOARD MEMBER JONES: Aye.

1 BOARD SECRETARY VILLA: Medina?

2 BOARD MEMBER MEDINA: Aye.

3 BOARD SECRETARY VILLA: Paparian?

4 BOARD MEMBER PAPARIAN: Aye.

5 BOARD SECRETARY VILLA: Moulton-Patterson?

6 BOARD CHAIR MOULTON-PATTERSON: Aye.

7 31.

8 MR. SCHIAVO: Okay. Item 31 is consideration of
9 staff recommendation to change the base year to 1999 for
10 the previously approved source reduction and recycling
11 element in consideration of the 1997-98 biennial review
12 findings for the source reduction and recycling element
13 and household hazardous waste element, and consideration
14 of completion of compliance order IWMA-BR99-95 for the
15 City of Loma Linda, San Bernardino County.

16 And Kaoru will also be making this presentation.

17 MS. CRUZ: After receiving the compliance order,
18 the city received assistance from the Office of Local
19 Assistance that particularly targeted implementation
20 staff in regards to meet the AB 939 mandate. They were
21 advised to implement certain programs and urged to do a
22 new base year to get the more accurate diversion rate.

23 The city has implemented all of the programs
24 that were identified as scheduled in the assistance plan.

25 The city originally submitted a new base year

1 change request with a diversion rate of 24 percent. As
2 part of the base year study review, the staff conducted a
3 detailed site visit.

4 Board staff's proposed changes can be seen in
5 their entirety in attachment three.

6 Because staff had worked with the city
7 previously, and visited a major manufacturer or business
8 which is one of the largest generators in the city, staff
9 and the city discovered that this business had not been
10 included in the study. This resulted in a total of
11 approximately 2,294 tons of diversion being included. It
12 was with these changes that the city's diversion rate for
13 1999 would beat 30 percent, in performing a preliminary
14 calculation that the diversion rate for 2000 would be 38
15 percent.

16 Based on this information, Board staff is
17 recommending option two of the agenda item which would
18 approve the revised new base year with staff
19 recommendations, accept the 1997-98 biennial review
20 findings, and end the compliance order for the city.

21 A representative from the city are present to
22 answer any questions.

23 This concludes my presentation. Thanks.

24 BOARD CHAIR MOULTON-PATTERSON: Thank you.

25 Mr. Eaton.

1 BOARD MEMBER EATON: Yeah, I have one question,
2 and perhaps the preparer of the documents can come
3 forward because the next item also pertains to it.

4 In the staff workup, my understanding is that
5 the city's waste stream is 28 percent residential waste
6 and 72 percent non-residential, is that correct?

7 MS. CRUZ: 28 Percent and 72 percent, yes,
8 correct.

9 BOARD MEMBER EATON: Then how come in item
10 number 32-14 which deals with Loma Linda in the next item
11 it talks about the following, again the same form filled
12 out by the same individuals; "Commercial and multi-family
13 programs need to be fully implemented, 50 percent of the
14 city's waste stream is in the commercial area."

15 So again, you know, it's just a matter of
16 playing games with these documents and these particular
17 individuals who fill out these forms, and I don't
18 understand it. So someone explain it to me. How can you
19 say it's 72 in one area, and 50 in another?

20 MS. MORGAN: We'd like the preparer of the
21 document to answer that question.

22 BOARD MEMBER EATON: Right, that's what I asked.

23 MS. MORGAN: Because there is, on page 32-14
24 there's a reference to 50 percent, and then on page 32-16
25 is a reference to 28 percent residential and 72 percent

1 non-residential, so I'll let them answer that question.

2 BOARD MEMBER EATON: That's what I just got done
3 saying.

4 MR. TSENG: Actually if you're referring to the
5 1066 form it actually should say, "More than 50 percent
6 of the waste stream is commercial waste stream." The
7 words "more than" has been left out.

8 The other thing that you're referring to in
9 terms of the split between the residential and the
10 commercial, it really hasn't changed very much from the
11 original study to the new study, it's varying by a few
12 percent, it's still pretty consistent.

13 BOARD MEMBER EATON: But at 25 percent, 28
14 percent difference in waste stream for commercial versus
15 residential, and the impact on programs it's a great
16 deal, so which is it?

17 MR. TSENG: The proper percentage is actually in
18 the new base year generation study. The description
19 that's written in the 1066 is a very generic description
20 just meaning more than 50 percent which is more than half
21 of the waste stream is in the commercial and industrial
22 sector.

23 BOARD MEMBER EATON: I know, but how am I
24 supposed to figure out what's going on here if I've got,
25 you know, two different sets of numbers, one more

1 general?

2 MR. TSENG: Okay. We can correct that.

3 BOARD CHAIR MOULTON-PATTERSON: You have some
4 other questions, Mr. Eaton?

5 BOARD MEMBER EATON: No.

6 BOARD CHAIR MOULTON-PATTERSON: Okay. Mr.
7 Paparian.

8 BOARD MEMBER PAPARIAN: Yes, as long as we're
9 kind of jumping back and forth I think now between 32 and
10 31, I had a question on 32.

11 The city, I gather, recently passed a C&D
12 ordinance?

13 MR. BARTON: Yes, that was incorporated this
14 past year, and we're in the process of, we're
15 implementing that, there hasn't been enough construction
16 to really see how that's going, what our intent is is to
17 review that later this year and make any modifications
18 that are necessary.

19 BOARD MEMBER PAPARIAN: And can you briefly
20 describe what is required under that ordinance?

21 MR. BARTON: Yes, what occurs is any new, any
22 remodeling or any new construction over 5,000 square feet
23 in size is required to submit a preliminary recycling
24 plan to show what is anticipated, what type of recycling
25 will be done, whether it's asphalt, concrete, drywall,

1 cardboard, whatever it is, and show what they feel those
2 percentages will be. And then at the end of the project
3 they're supposed to submit actual records of what
4 occurred.

5 BOARD MEMBER PAPARIAN: Anything other than
6 filing the plan where they forecast the percentages, is
7 anything required of them in terms of recycling, a
8 minimum amount or anything like that?

9 MR. BARTON: Yeah, in the policy itself it
10 states that the goal is 50 percent recycling, of whatever
11 amount they have they want to see 50 percent of that
12 total recycled.

13 BOARD MEMBER PAPARIAN: If someone were to
14 submit a plan that was 25 percent.

15 MR. BARTON: They would have to show their good
16 faith effort to show why they couldn't meet that 50
17 percent goal.

18 As an example, maybe there's not the materials,
19 the weight of those materials that would get that
20 tonnage.

21 BOARD MEMBER PAPARIAN: Okay.

22 MR. BARTON: Say cardboard as opposed to
23 concrete, for example.

24 BOARD MEMBER PAPARIAN: Okay. And in terms of
25 the city itself, does the city have a strong committment

1 to a recycling program at this point?

2 MR. BARTON: Yes, sir. Based on what we've
3 done, in particular the last two years, and what our
4 projections are; in other words, we're looking at the wet
5 dry recycling for commercial, multi-family, and really
6 looking into the C&D program, yes, I believe we can say
7 we're committed to this.

8 BOARD MEMBER PAPARIAN: Okay. One of the things
9 I was a little bit troubled by is that you don't have a
10 waste reduction and recycling program fully Implemented
11 for city departments, and you don't anticipate that until
12 the year 2003. Any reason why that can't be, you know,
13 why is it, why is it taking so long for the city's own
14 agencies to catch up on source reduction and recycling?

15 MR. BARTON: That can be moved up. We, right
16 now with our asphalt and concrete we do take that to a
17 recycling, and it's reprocessed into base material to be
18 used on roadways. And the city has changed their
19 specifications to allow recycled material to be used as
20 base material in the roadways for new construction.

21 We're also in our construction projects, on ones
22 that are going to be starting as early as next week,
23 we're pulverizing asphalt and reusing that in the
24 systems, and that will result in a great deal of
25 recycling.

1 BOARD MEMBER PAPARIAN: Okay. I was looking at
2 page 32-17 where there was the reference to the city
3 departments, and I presume this also means things like
4 recycling programs within the office buildings and so
5 forth?

6 MR. BARTON: That has been done and ongoing for
7 the last several years. Yes, as far as recycling, we
8 have recycling bins throughout the offices, we buy
9 recycled paper for all our materials that go out, that's
10 been going on for for some time. And I believe that's, I
11 can't tell you exactly where it is in here, but it does
12 state that in the report.

13 BOARD MEMBER PAPARIAN: So what does the year
14 2003 mean in this context?

15 MR. BARTON: It means that we're going to
16 continue with that and see if we can continue recycling
17 more programs. As an example, and it ties into that, for
18 our mulching it says that we're doing the mulching
19 program, program where we're taking our material and
20 we're going to continue with our contractor's material
21 for our landscape maintenance districts, bring that in,
22 mulch that material up, and give it out to our residents
23 that can take that free of charge. And it's, we're going
24 to continue programs and explore more programs to
25 implement.

1 Does that help or --

2 BOARD MEMBER PAPARIAN: So if I were to go into
3 city hall or any of your city offices right now I'd see a
4 lot of evidence of recycling bins and recycling
5 activities and educational materials.

6 MR. BARTON: Absolutely. And we would invite
7 you and your staff to come on down and take a look, and
8 actually your staff has.

9 BOARD MEMBER PAPARIAN: Thank you.

10 MR. BARTON: And for the record I just have here
11 my name is Dennis Barton, Public Works Superintendent,
12 City of Loma Linda.

13 BOARD MEMBER PAPARIAN: Thank you.

14 BOARD CHAIR MOULTON-PATTERSON: Thank you. We
15 need to either get a motion on the floor or we need to
16 take a break because our court reporter does have to
17 leave.

18 BOARD MEMBER JONES: Madam Chair.

19 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

20 BOARD MEMBER JONES: I want to thank our staff
21 for going down, you found 'em a lot of tonnage, you did
22 good. But it shows that the program works of audits, or
23 it does in my mind. And this came out to about a ton a
24 person a day, or I mean a year, a little on the high side
25 but reasonable.

1 I'm going to move adoption of, and I do agree
2 with Mr. Eaton when it comes to the next item, these are
3 critical SB 1066, it's critical that we know what we're
4 approving.

5 On this resolution, Madam Chair I want to move
6 adoption of Resolution 2002-47, consideration of the
7 staff recommendation to change the base year to 1999 from
8 the previously approved SRRE, and consideration of the
9 '97-'98 biennial findings for the SRRE and HHWE for the
10 compliance order, completion of compliance order
11 IWMA-BR99-95 for the City of Loma Linda in San Bernardino
12 County.

13 BOARD MEMBER MEDINA: Second.

14 BOARD CHAIR MOULTON-PATTERSON: Motion to
15 approve Resolution 2002-47 by Mr. Jones, seconded by Mr.
16 Medina.

17 Please call the roll.

18 BOARD SECRETARY VILLA: Eaton?

19 BOARD MEMBER EATON: Abstain.

20 BOARD SECRETARY VILLA: Jones?

21 BOARD MEMBER JONES: Aye.

22 BOARD SECRETARY VILLA: Medina?

23 BOARD MEMBER MEDINA: Aye.

24 BOARD SECRETARY VILLA: Paparian?

25 BOARD MEMBER PAPARIAN: Aye.

1 BOARD SECRETARY VILLA: Moulton-Patterson?

2 BOARD CHAIR MOULTON-PATTERSON: Aye.

3 And we will take a break to change court
4 reporters.

5 (Thereupon there was a brief recess at
6 4:06 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CHAIRPERSON MOULTON-PATTERSON: Okay Item 32.

2 DEPUTY DIRECTOR SCHIAVO: Agenda Item 32 is
3 consideration of staff recommendation on the application
4 for an SB 1066 time extension by the City of Loma Linda,
5 San Bernardino County. And Kaoru will also be making this
6 presentation.

7 MS. CRUZ: The Board originally heard and
8 approved the SB 1066 --

9 CHAIRPERSON MOULTON-PATTERSON: Excuse me for a
10 moment, ex partes, Mr. Eaton?

11 BOARD MEMBER EATON: None.

12 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones?

13 BOARD MEMBER JONES: Dennis Ferrier of the LEA
14 and Mike Schmelling the LEA, one from Santa Barbara and
15 one from Santa Cruz.

16 CHAIRPERSON MOULTON-PATTERSON: Thank you.
17 Mr. Medina.

18 BOARD MEMBER MEDINA: None.

19 CHAIRPERSON MOULTON-PATTERSON: Mr. Paparian.

20 BOARD MEMBER PAPARIAN: None.

21 CHAIRPERSON MOULTON-PATTERSON: And I have none.
22 Sorry about that.
23 Please continue.

24 MS. CRUZ: The Board originally heard and
25 approved the SB 1066 application procedures at the May

1 2000 Board meeting. Based upon public feedback and board
2 guidance, it was agreed that statutory requirements for
3 submitting a request would be incorporated into the
4 application. Upon the Board approving the application and
5 approval process, the jurisdiction was sent a letter
6 addressing their options for submitting an application,
7 including receiving technical assistance.

8 This agenda item is the first SB 1066 petition
9 request to be considered by the Board. In the near future
10 many more SB 1066 requests will be submitted to the Board
11 for consideration.

12 As a result of the cities completing their
13 compliance order, and receiving Board staff assistance,
14 the City found that they would not be able to meet the AB
15 939 mandate to reduce their waste stream by 50 percent by
16 the year 2000, despite the City's effort to implement new
17 and expanded diversion programs and outreach activities.

18 As a result of this analysis, to City is
19 submitting a time extension request to the Board. The
20 City built their request off their processed 1999
21 diversion rate. Although the City anticipates exceeding
22 the 50 percent requirement with this plan of correction,
23 they wish to move forward with these plans.

24 A specific reason why a time extension is needed
25 for this jurisdiction are as follows.

1 Promotional and multi-family programs need time
2 to be fully implemented. Recently implemented programs
3 need to have time to develop. Some of these programs
4 include school recycling programs, commercial education
5 programs, commingled recycling bin placed at the Civic
6 Center for multi-family use, multi-family pilot programs,
7 business and residential recycling all stars competition,
8 pavement rehabilitation using rubberized asphalt, grass
9 cycling and composting education through Garden Masters
10 and E-cycle programs.

11 The City also participates in a countywide public
12 education committee to promote regional recycling efforts.

13 Most of the implementation activities will take
14 place in the first two years with money taking place the
15 third year. Both staff have determined that the
16 information submitted within the application is adequately
17 documented.

18 Based on this information Board staff is
19 recommending that the Board approve the time extension
20 request for the City. Representatives from the City are
21 present to answer any questions.

22 This concludes my presentation.

23 Thank you.

24 CHAIRPERSON MOULTON-PATTERSON: Thank you.

25 Mr. Eaton.

1 BOARD MEMBER EATON: Maybe I'm mistaken, how
2 long -- the statute of laws is up to three years. What
3 are they requesting?

4 DEPUTY DIRECTOR SCHIAVO: This is through the --

5 BOARD MEMBER EATON: No, it's a 1066 and we've
6 gone through the process, so are they requesting a
7 one-year extension?

8 MS. CRUZ: Three years.

9 BOARD MEMBER EATON: Where is their corrective
10 action plan for us to look at?

11 MS. CRUZ: That's --

12 DEPUTY DIRECTOR SCHIAVO: That's on --

13 BOARD MEMBER EATON: That would go to Mr.
14 Paparian's question about where if we look at the
15 corrective action plan and we're not satisfied with that
16 corrective action plan, we can then seek to have that
17 corrective action plan approved on those programs, which
18 we feel are either sluggish or not in keeping with stuff.
19 So none of that's here.

20 MS. CRUZ: That is attached to -- it's attachment
21 2, and it's in the application, Section 4(a), Plan of
22 Correction. That's to --

23 BOARD MEMBER JONES: Madam Chair.

24 CHAIRPERSON MOULTON-PATTERSON: Yes, Mr. Jones.

25 BOARD MEMBER JONES: While Mr. Eaton is looking

1 at that, just a question. One of the things -- we're all
2 going to have different views on SB 1066. I see it as a
3 real tool to help the cities.

4 The one thing that as we develop these, and
5 truthfully Loma Linda is the first one, so there's going
6 to be a little -- you can ask Mark White and others that
7 have experience with the first of certain things, there
8 are certain things we're going to need to get comfortable
9 with as a board.

10 Is there or will there be an evaluation process
11 of the programs now, meaning in the curbside collection
12 programs, what's the participation rate of the citizens
13 and what kind of tonnage are they getting in the
14 commercial, you know, what's the participation rate of the
15 commercial businesses doing real recycling?

16 I think it's important, because it's going to be
17 key and it's going to be able to let the City focus on the
18 areas where they really need to either do door hangers as
19 opposed to a countywide education program, or, you know,
20 focus the attention on certain waste streams that will
21 help them minimize expenditures and maximize real
22 diversion.

23 And I am not sure that I saw that. And I'm just
24 wondering if it may have been something we didn't talk
25 about, you know. And that's -- I'm cool with that. You

1 know, I mean I just want to try to get an idea how we're
2 going to evaluate what's going on.

3 MR. TSENG: Eugene Tseng, consultant for Loma
4 Linda.

5 And if you look on the Plan of Correction, if you
6 look at the description of the program, let's take the
7 wet/dry program, and what they're planning to do there is
8 basically go through the customer list, all of the
9 customer list, you know, separate the customers into, you
10 know, what they call wet account or a dry account.

11 So a dry account would be like an office building
12 and a wet account would be like a restaurant.

13 BOARD MEMBER JONES: Understood.

14 MR. TSENG: And then so the wet ground would
15 basically be collected separate from the dry. And the wet
16 materials would go to the disposal and the dry would go to
17 a MRF or sorting.

18 You see at the bottom a description of tracking
19 and monitoring. What we actually plan to do is to build a
20 monitoring mechanism to see how effective the collection
21 system is in terms of as we increase the education and the
22 outreach, you have -- if you look at Loma Linda, the
23 single largest generator there with over half of the
24 employees is really just one hospital. And the hospital
25 has many, many different buildings.

1 So just to do the wet/dry there, we're having to
2 say, okay, this one has a cafeteria, that's going to be a
3 wet account, but the bin has to go behind the medical, and
4 the office is going to be all dry. But having to do the
5 education it's phased because in the hospital there's what
6 we call fugitive medical waste, because all this stuff is
7 going to be hand sorted and we really have to put a very
8 heavy emphasis on the education to make sure that the
9 medical waste doesn't get into that dry material.

10 BOARD MEMBER JONES: As I understood this, Mr.
11 Tseng, on the plan of correction, very similar to the
12 original SRREs, which said identify the program and then
13 try to tell us what you think you'll get as far as the
14 success rate of diversion, that's basically what this
15 says. And I understand that and I understand that you're
16 at 24 percent or whatever now.

17 I guess what I'm looking or trying to figure out,
18 and maybe it's the next generation of this or if there is
19 a, I don't know if part of this is some review of how
20 they're doing on their SB 1066 at different times, you
21 know, through the three years.

22 And you've done a good job of saying, you know,
23 where we think we're going to attack, but I guess I'm
24 wondering not all of these -- well, actually, I guess all
25 of these are new programs.

1 MR. TSENG: Yes.

2 BOARD MEMBER JONES: So there's no existing
3 programs that you guys are going to go after.

4 MR. TSENG: Well, we'll be expanding upon the
5 existing programs. I think the City representative can
6 speak to that. But they have done an evaluation of the
7 current curbside to see what the participation rate is,
8 what the setout rate is and even by material type.

9 But the monitoring, I think we're looking to do
10 annually to see how we're increasing.

11 BOARD MEMBER JONES: That's important to me,
12 because I think that was part of why this legislation made
13 so much sense, was to -- you know, we've built something
14 in eight years, and you're not going to get there. You
15 know what I mean, we've done -- the industry and the
16 cities have done an incredible job.

17 But we've got to be able to look at what we're
18 doing to really focus on where we're going to go. And
19 maybe that comes in the evaluations in out years. And if
20 that's the case, that answers my question. But we ought
21 to think about making this part of the exercise, so that
22 cities get the benefit of knowing really how their stuff
23 is doing, you know.

24 I mean it's one thing to have a curbside program.
25 It's another to have 20 percent participation, you know.

1 Thanks.

2 MR. TSENG: Thank you.

3 CHAIRPERSON MOULTON-PATTERSON: Mr. Eaton.

4 BOARD MEMBER EATON: And under 1066, I'm looking
5 at some of the programs, but some of these programs were
6 just started, is that correct?

7 MS. CRUZ: Yes, some of them were implemented
8 last year.

9 BOARD MEMBER EATON: So if I'm to look at the
10 whole spectrum where is the good faith effort, is it the
11 fact that we put them on good compliance to get there? I
12 mean, that's my problem, and I don't think that we need to
13 grant a three-year extension to the year 2005, and what
14 happens in 2006?

15 DEPUTY DIRECTOR SCHIAVO: The 1066 program --

16 BOARD MEMBER EATON: It just goes away.

17 DEPUTY DIRECTOR SCHIAVO: Yes.

18 BOARD MEMBER EATON: So when you have a
19 jurisdiction such as this, which has, I think, you know,
20 demonstrated that they have not actually begun and we had
21 no way to monitor these programs that we need to keep a
22 tighter rein, and have them come back on a much more
23 regular basis, as opposed to letting them hang out there
24 for three years, and then run the clock on us.

25 And so that's the discretion we have as a board.

1 And I don't know if other board members understand that,
2 but we have wide discretion when it comes to this 1066
3 process and what we want to craft.

4 And this is the one area where we really can have
5 a say in how things are done. And I think, you know, that
6 we need to start doing it right now in a sense that it
7 talks about composting. They've got residential, yet the
8 hospital, which has the largest amount of organics is
9 nowhere to be found. What composting are you doing there?

10 MR. TSENG: The pilot that we're looking at
11 implementing is actually with the cafeteria at the
12 hospital.

13 BOARD MEMBER EATON: I don't see it here. And
14 that's part of what the law in 1066 talks about. Yet you
15 put down just a formula for composting in residential,
16 which gets you .1 percent.

17 MR. TSENG: If you look at the second item down
18 from the wet/dry, we have the commercial on-site
19 inspecting composting at the Loma Linda university, that's
20 the hospital complex. So it is included in there.

21 BOARD MEMBER EATON: But that's the dry.

22 MR. TSENG: No. Well, also --

23 BOARD MEMBER EATON: You said you're only going
24 to get ten percent.

25 MR. TSENG: We are addressing the dry stream, but

1 when you do wet/dry, then you automatically get a wet
2 stream. And if it's going to be compostable food --

3 BOARD MEMBER EATON: How do I know from this
4 document what you're doing in terms of composting that?

5 All I have to go on is what's in the document --

6 MR. TSENG: If you look at the --

7 BOARD MEMBER EATON: And you may know that
8 because you're actually doing the program, but I don't
9 have any idea.

10 MR. TSENG: Okay. If you look at where it says
11 data fully completed, it says will complete feasibility by
12 the end of this year. So that composting program pilot
13 will be done by the end of this year.

14 CHAIRPERSON MOULTON-PATTERSON: While you're
15 looking, Mr. Eaton, I thought my conversation with you,
16 Mr. Schiavo, but I'm not sure, but I thought I remembered
17 that we were going to -- the cities or counties that had a
18 long ways to go, we were going to put on a much shorter
19 time extension so we could better track the progress.
20 And, you know, if they just had a couple of points, maybe
21 it would be longer. Didn't we have that conversation?

22 DEPUTY DIRECTOR SCHIAVO: It was at the May -- I
23 was looking at the transcripts, it was at the May 2000
24 board meeting, and we talked in terms of conceptually that
25 we were hearing some of that out there as one idea of how

1 to look at time frames. That if jurisdictions were
2 doing -- were high performers give them more time as a
3 reward, and those that did not perform as well, give them
4 a little bit less time. So it was a conceptual --

5 CHAIRPERSON MOULTON-PATTERSON: With 1066, and I
6 know Ms. Hunter is here and others, but say we just give
7 them a year, that wouldn't mean that we couldn't give them
8 another year if we really felt it was deemed necessary?

9 DEPUTY DIRECTOR SCHIAVO: That option is
10 available as well.

11 CHAIRPERSON MOULTON-PATTERSON: Why would we give
12 them three years?

13 BOARD MEMBER EATON: Yeah.

14 DEPUTY DIRECTOR SCHIAVO: The other way with a --
15 you know, there's a lot of different ways as Mr. Eaton
16 stated. Also, it's part of this process there are
17 progress reports that are also required. They can be set
18 up through the annual reporting process. They can be more
19 frequent than that.

20 Again, there is a lot of flexibility depending on
21 the time frames. If it's a shorter timeframe, you'd
22 probably want more frequent monitoring. If it's a longer
23 timeframe, maybe extend it a little more. Again, it's
24 your discretion.

25 CHAIRPERSON MOULTON-PATTERSON: Had you finished,

1 Mr. Eaton, I'm sorry?

2 BOARD MEMBER EATON: Loma Linda, is it a private
3 institution?

4 MR. BARTON: Yes.

5 Dennis Barton, public works, Superintendent, City
6 of Loma Linda. May I make a couple of comments?

7 BOARD MEMBER EATON: Sure.

8 MR. BARTON: On the good faith efforts, I really
9 feel that we are making progress, and that good faith
10 efforts are in Item 3 under Section 3(a) Time Extension,
11 and showing what the programs are.

12 We have several programs listed in there. And
13 what we want to do really in looking at the new is perhaps
14 new in that we are expanding on some programs. One of the
15 reasons for the three-year extension, I believe, is that
16 some of these do take awhile. They do take awhile to
17 monitor and look at what we're doing a year from now. And
18 if adjustments have to be made to improve that program,
19 that's what we want an opportunity to do.

20 A couple of others we're looking at maybe in
21 2003, I know that's only next year, but I really think
22 that the three years is to move -- progress is being made.
23 I think it's clear that we are making that progress, and
24 we want to continue in that vein.

25 And we have no problem with doing the annual

1 monitoring, and I think that's required anyway.

2 CHAIRPERSON MOULTON-PATTERSON: Thank you.

3 Mr. Paparian and then Mr. Jones.

4 BOARD MEMBER PAPARIAN: Yeah. I had a couple
5 of -- several questions for various people.

6 The first one is sort of a legal one, I think.

7 And that is, we're going to have something today which
8 includes a copy of a plan that's been talked about. If
9 we're going to hold this locality accountable for the
10 programs in this plan, do we hold them accountable for the
11 bottom line number, do we hold them accountable for the
12 programs described here in whether they implemented them,
13 do we hold them accountable for the numbers associated
14 with those programs?

15 STAFF COUNSEL BLOCK: Elliot Block from the legal
16 office. Essentially, both. It's very similar to -- what
17 we would be doing at the end of the extension we'd be
18 doing the same type of biennial review analysis that we
19 would be doing for 2000. So have you done what you said
20 you would be doing and have you met the 50 percent goal
21 and made the good faith effort to do that?

22 So, essentially, all it's doing is moving the
23 goal a year back and adding some additional programs to
24 look at in terms of seeing program implementation.

25 BOARD MEMBER PAPARIAN: Okay. And so we would

1 then go back and say did you do what you said you were
2 going to do in here?

3 STAFF COUNSEL BLOCK: That's correct.

4 BOARD MEMBER PAPARIAN: Could you look at the one
5 that Mr. Eaton brought up, the Loma Linda University one
6 on Page 32-16. It's starts out commercial on-site
7 recycling and composting program with Loma Linda
8 University.

9 If I was to come back in a few years and say did
10 they do what they said they were going to do, what would
11 that be, just looking at that description? Would it be
12 that they --

13 DEPUTY DIRECTOR SCHIAVO: We would focus -- I was
14 going to say from a programmatic perspective, we would --
15 there's two levels. One is we would look are they
16 implementing the programs that they committed to
17 implementing? We'd be looking at that, but when we looked
18 at the numbers, we know this is a planning estimate, we'd
19 be looking at the numbers in total, are they meeting or
20 getting towards 50 percent?

21 So we'd be looking at the 50 percent goal.
22 Again, these are estimated percentage amounts that they
23 think based on their studies that can extract these
24 amounts. But again, as this is over, we would be looking
25 at, you know, ultimately a 50 percent goal.

1 BOARD MEMBER PAPARIAN: As I'm reading this, I
2 mean -- it looks like we have some questions about the
3 numbers at the end of this process. As I'm reading this,
4 if they do some planning right now with the University and
5 at the end of the year decided it's not feasible to do
6 anything else with the university, they've met this plan,
7 because it says that they're in the planning stages only
8 and will complete feasibility by the end of 2002.

9 So if at the end of 2002, they say that it's not
10 feasible, then we can't hold them accountable for anything
11 at the university, as I'm reading this.

12 DEPUTY DIRECTOR SCHIAVO: It says feasibility and
13 conduct the program.

14 BOARD MEMBER PAPARIAN: The description says they
15 will conduct a composting program, but to date fully
16 completed seems confusing to me.

17 MR. BARTON: Thanks. The idea is to look at
18 that, and really it is, it's to see if it's feasible, see
19 if it's economically feasible for the university to
20 conduct such a program. And if there's some things
21 that -- to help with through some sort of grant or
22 something like that, that has to be worked out through the
23 City, see what needs to be done.

24 And really, you're looking at if it does, it's
25 one-tenth of one percent. But what we're trying to show

1 is not only are we going to be looking at the larger
2 programs with the wet/dry for commercial and multi-family
3 and the C&D plans, but we want to look at the smaller
4 picture, too, and see if there's other things that we can
5 do.

6 That's really what we're trying to show. We're
7 trying to show that we're not just going to take one or
8 two programs and put out what we think are going to be big
9 numbers, but let's look at everything. If we can do some
10 more education to help get one more percent or one
11 tenth-of one percent then that's what we want to do, but
12 we need to look and see if it's feasible. I'm not sure
13 for one-tenth of one percent we want to make a commitment
14 and say yeah, that's what we're going to do as opposed to
15 saying is it something that we can do.

16 BOARD MEMBER PAPARIAN: And the other question,
17 probably for Mr. Schiavo and maybe for the legal office,
18 maybe even for Ms. Hunter, I see her in the audience, what
19 kind of precedent are we setting with this? This is our
20 very first one, you know. I think that's -- you know, it
21 creates a level of anxiety for me in making sure that
22 whatever precedent we're setting, whatever bar we're
23 setting, is the right one.

24 I mean, in your view what kind of precedent are
25 we setting by approving a plan like this one?

1 DEPUTY DIRECTOR SCHIAVO: You are setting the
2 future precedent for all of these. The Board, again as I
3 mentioned back in May of 2000, approved what the forms
4 would look like generally, what the process would look
5 like, but we've never dealt with this. And we
6 purposefully brought this forward this month ahead of,
7 what we anticipate being, a number of these in April and
8 May of this year, so that we can give you an opportunity
9 to look at what the actual plan of correction and
10 performance is going to look like.

11 But yeah, this is setting a precedent for what
12 the future ones will look like and how we will respond in
13 doing our analysis of those as well.

14 BOARD MEMBER PAPARIAN: I kind of share Mr.
15 Eaton's concern about the level of specificity then. By
16 setting the precedent here, other localities will be able
17 to argue that this is the level of specificity that the
18 Board accept.

19 DEPUTY DIRECTOR SCHIAVO: This one is a little
20 bit unique in that there's a base year that preceded this
21 and it laid out the programs, as well as the derived
22 diversion from each of those individual programs. And so,
23 you know, maybe we shouldn't have done that, but we
24 treated -- you know, we were referring back to number 31,
25 the one base year, because it does have those broken out.

1 But in the future they're going to have to lay
2 out more specifics within the application itself. So this
3 is a little bit unique in that way.

4 BOARD MEMBER PAPARIAN: Okay. So the precedent
5 is more for those that are dealing with a new base year
6 and have provided a level of specificity, such as we saw
7 in the agenda item just prior to this one, and not -- it's
8 not the type of precedent that can be used then across the
9 board for localities?

10 DEPUTY DIRECTOR SCHIAVO: No. This will be a
11 little bit unique. Next month, we're going to bring a
12 couple that are -- are the others that are independent.

13 Also, as you know, Mr. Jones was talking in terms
14 of level of detail. We were not ourselves looking at
15 levels of participation. We were looking at the diversion
16 that was derived, as I mentioned, from a curbside program.
17 For instance, we see that there were about three percent.
18 You know, on average you see anywhere from two percent to
19 ten percent or so in the curbside program.

20 And my assumption is that the jurisdiction is
21 looking at where they're going to get the most bang for
22 their buck to get to the 50 percent level. So it looked
23 fairly reasonable to us. Knowing that these are estimated
24 diversion levels, we're trying to achieve the 50 percent.

25 But, again, in the future ones, we won't

1 necessarily see that breakout in a prior base year, it
2 will have to be incorporated to see where they have to
3 focus.

4 BOARD MEMBER PAPARIAN: Okay. That actually
5 gives me a little bit more comfort knowing that there is
6 enough uniqueness to this that we won't be seeing a lot of
7 plans, that it might be as vague as this one.

8 BOARD MEMBER EATON: If I may just ask. I think
9 why I struggle and struggle with 1066 and why I'm looking
10 to the staff is, as I look at it and say here's the
11 jurisdiction, and whatever their past history has been,
12 here's a chance to make a new start, okay, for whatever it
13 is, and we can help you do that, because you may have done
14 some things, experimented wrong, certain factors beyond
15 your control.

16 But what I don't see in any of these documents
17 and what I would like for our staff is, okay, if we're 28
18 percent residential and we're 72 percent, you know,
19 nonresidential or 50/50, what did they do under the 28
20 percent, how much of their diversion was based on that 28
21 percent, and is there room in those residentials for the
22 corrective action plans to increase that sector of it, or
23 is it all in the commercial?

24 And I don't see that anywhere in the literature
25 here. I don't see any of our staff work done that says

1 here's what we have. Here's 28 percent of the waste
2 stream, and they only captured 12 percent of that through
3 recycling, reuse and reduction. Is there a way we can
4 boost that up?

5 That's what we ought to be doing and that's what
6 you ought to be giving us, not the jurisdiction telling
7 us. And if it's a commercial arena, what things have we
8 called upon, because this is not unique, contrary to
9 popular belief. There are other jurisdictions with the
10 same kinds of facilities.

11 And the reason why I ask the question was it was
12 a State facility, because I assumed we'll get stuck with
13 the C&D statement, if they were building on there, and
14 that that wouldn't be counted.

15 So the question really becomes in these 1066s is
16 what can we do with the percentages of each of the waste
17 stream to improve those segments, and what can those
18 jurisdictions do programmatically to increase those, and
19 that's not here, at least from my perspective and that's
20 just one person.

21 But that's what it should be. It should be they
22 propose it, our staff analyzes it, filters it, synthesizes
23 it, and says, you know, your curbside or you're doing
24 something that could help. But if you look at what they
25 did to get the base-year induction, it's all source

1 reduction. Yeah, it is.

2 I mean look at it, it's bone renderings and
3 pallets from a mortuary. I mean, you know, how many
4 pallets can they use?

5 I mean, it's just crazy, and there is no analysis
6 of what can boost the recycling or reuse or reduction as
7 to the 28 percent or the 72 percent in these programs.
8 It's just a formula.

9 And what I fear is that other jurisdictions will
10 look at this and say we'll, we've just got to come up with
11 the right formula and get it past the Board. So what is
12 our analysis?

13 CHAIRPERSON MOULTON-PATTERSON: Mr. Schiavo, I'm
14 feeling very uncomfortable, too. This is a really
15 important thing for us. I really want to make 1066 work
16 for the cities that are going to make it work, and not
17 saying that Loma Linda won't.

18 But I just would really like some verification of
19 some things, and I think it would be best to continue
20 this. I don't know if I have any agreement.

21 DEPUTY DIRECTOR SCHIAVO: I would like to respond
22 regarding the residential commercial split. If you look
23 at, again, back to Item number 31, they're getting about
24 nine percent from compost from the residential sector.
25 They're also getting almost three percent from the

1 curbside.

2 So they're almost getting 50 percent on their
3 residential sector. So that would lead me to believe that
4 you need to focus on the commercial sector in which they
5 essentially have done with their application.

6 CHAIRPERSON MOULTON-PATTERSON: Well, maybe it
7 can be laid out a little differently.

8 Mr. Jones.

9 BOARD MEMBER JONES: I think all of us are pretty
10 much saying the same thing in a little different view. I
11 do think that this creates a unique problem, where we've
12 just approved a new base year that has a lot of the
13 information that probably should be provided in these
14 documents, so that we have an idea. I mean, I get a
15 little nervous about our staff analyze -- I don't have a
16 problem having them analyzing the data.

17 I have a problem when they analyze the program.
18 You know, if they go down and look at a curbside program
19 that's got 47 percent participation, and they say well,
20 that's not enough, but yet, you know, they're not aware of
21 a lot of conditions that go on day-to-day.

22 And they may go to another one that's got 80
23 percent participation, but they throw away very little,
24 you know, there's very little in the curbside bin. That
25 bothers me.

1 I do like and I do support, and we're all
2 different, the three years. And I'll tell you why. You
3 propose it. You look at it. You see if it's going to
4 fit. Then you have to sell it. And you've got to go out
5 and fund it, and you've got to get the stuff in place, and
6 then a year and a half is gone or a year or six months
7 depending upon what it is and, you know, how easy it is to
8 get equipment, and then you do the program and you analyze
9 it again, you know, to see if it's really working or not.

10 Three years is a long time and it may sound like
11 it's giving cities something that they maybe shouldn't
12 have. I think in a lot of cases it's not giving them
13 enough, that's why they broke it down to a three year and
14 a two year, with a total of five years that they could use
15 this.

16 But I think that it's incumbent on us to get
17 those progress reports. And we're going to have to figure
18 out a mechanism so that we know whether it's just a
19 progress report that's sent to our offices in some kind of
20 format, something so that we know that people -- and the
21 cities need to know.

22 I mean if you go back to when this all started,
23 and you looked at a local task force that's sitting in a
24 room and tried to decide what was going to go into an
25 SRRE, it was everything under the sun and God forbid any

1 of us ever had to pay for it.

2 And then they understood, and they got smarter,
3 and they got smarter. This needs to be the next
4 generation of looking at the SRRE, what failed, what
5 worked, what can be improved, and what can we use this
6 mechanism so that we voluntarily can get an extension and
7 get on to the next thing.

8 I know we have a difference of opinion, but
9 that's how I see it and have always felt about it. And I
10 think it's important to realize that while the mandate is
11 2000 for fines and penalties, this extends that for three
12 years before we have to worry about that. And with the
13 new legislation every two years we've got to do biennial
14 reviews, and cities and counties are still on the hook for
15 the fines forever. It didn't go away.

16 This is the tool that could get them to the next
17 step. And it is unfortunate that it follows -- well, it's
18 fortunate or unfortunate. As a stand-alone document, it's
19 unfortunate that it follows a new base year. It's
20 fortunate that you were able to do an audit of the
21 programs and the numbers in that jurisdiction to verify
22 that, in fact, they got 28 percent and it's real.

23 That's a heck of a bonus. So, you know, I'll
24 defer to my other members, but I'm prepared to make a
25 motion to push -- to move the resolution, but I'm not

1 going to jam anybody.

2 CHAIRPERSON MOULTON-PATTERSON: Well, just in
3 response, Mr. Jones, I just want to make sure no one wants
4 the cities to be more successful than I do. And I just
5 don't want to give them a three year extension and then
6 have them fail. I mean, if we give them a year and really
7 give them assistance, I don't know, in my way of thinking,
8 it might be better, but I'm not wedded to that.

9 Ms. Hunter, did you wish to speak?

10 MS. HUNTER: If I could, thank you very much.
11 Yvonne Hunter with the League of California Cities. The
12 League was the sponsor of SB 1066, so I'm just here to
13 provide some general commentary. I had not seen the City
14 of Loma Linda's application beforehand, and I'm still just
15 reading it now.

16 A couple of things. You're absolutely right,
17 what you do here fortunately or unfortunately does set a
18 precedent. And I think one of the messages that the Board
19 is sending is you're asking really good questions, hard
20 questions. And whether you act on it today or you put it
21 over is clearly your decision.

22 I would suggest if you do put it over, because
23 you want the jurisdiction to have different information in
24 their application because of the message it's going to
25 send or the precedent it's going to send for others that

1 you make it clear you're putting it over without
2 prejudice, because you want them to include more
3 information.

4 I would encourage the Board to consider a longer
5 extension than a shorter one for exactly the reasons Mr.
6 Jones said. And, again, this is a precedent. I think the
7 City would be proposing different things if they were only
8 going -- a city not this city, a city would propose
9 different actions if they were only going for one year,
10 because they would be proposing things that they know they
11 could complete and document and meet after one year.

12 So this would be a different proposal and it's
13 important to remember that in the law at the request of
14 Senator Bowen's staff, we put in there that as part of
15 their annual report they have to give an update of their
16 progress in complying with all the things they said they
17 were going to do, so that is your double check on how
18 they're proceeding.

19 I'm happy to answer any other questions, but I
20 think it's right, there's a good side and a down side that
21 this follows their base year reduction.

22 One final point, if at the end of three years any
23 jurisdiction falls short of what they said they were going
24 to do, as I think Pat and Elliot said, the Board reviews
25 that based upon the good faith effort standard. There may

1 have been very good reasons why they couldn't meet --
2 implement a program or meet what their targeted reduction
3 is.

4 And the important part is for them to describe
5 that reason, what they're doing to correct it, and are
6 they making a good faith effort to proceed along. So
7 those are the comments sort of in general for SB 1066.

8 And I'm happy to answer any questions.

9 CHAIRPERSON MOULTON-PATTERSON: Thank you.

10 CHIEF COUNSEL TOBIAS: Madam Chair, could I
11 respond to this issue of precedent for this and just
12 comment on it.

13 I do think that what the Board does on this first
14 one is very, very important, and probably the first
15 couple, because I think we're all feeling our way forward.
16 I think as the Chair said we want the cities to be
17 ultimately successful with this, but the Board is also
18 seeing this for the first time.

19 So to the extent that what you do in the first
20 one is very important and will be perceived by others to
21 follow as a model or as something to look to, I think it
22 will be important.

23 I would urge the Board to make it clear that this
24 is not necessarily a precedent that just because of what
25 the Board does here that they don't have flexibility to

1 look at others as they come in, and to, you know, kind of
2 consider this as an evolving process.

3 Obviously, whoever gets in first on a process
4 like this has some advantages. The Board hasn't seen
5 anything else. We're feeling our way through. And as
6 others come in, the Board may see either how things are
7 working or see programs that they want or see how we need
8 to basically perhaps have the cities that are coming in
9 come in with more choices.

10 This is a three-year program. This might be, you
11 know, in a year we'll be back when we talk about the
12 feasibility and all that. But I really do feel like the
13 Board will continue to have some flexibility in looking at
14 this.

15 Conversely, of course, we don't want to be
16 unfair. We don't want to do something down the road
17 that's not -- that's so different from this one that it's
18 not fair in some way. But I do think -- I guess I'd say
19 let's not use so much the word precedent is that this, you
20 know, is a model to a certain extent, but that the Board
21 will consider this an evolving process.

22 CHAIRPERSON MOULTON-PATTERSON: Thank you, Ms.
23 Tobias.

24 Mr. Paparian.

25 BOARD MEMBER PAPARIAN: No, she addressed the

1 issues that I was going to raise.

2 BOARD MEMBER JONES: Madam Chair.

3 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones.

4 BOARD MEMBER JONES: I agree with Kathryn and
5 with folks. And I don't think this should be -- this
6 should set a precedent, because we've got -- we've just
7 approved a base year in front of it. And I think that's a
8 condition of why this would be okay.

9 But I think on a bigger picture if we do want to
10 set a precedent, I mean, I don't have a problem. If
11 there's not a majority of this board that wants to vote on
12 this. I think SB 1066 has been the light at the end of
13 the tunnel for cities and counties, since it was passed,
14 since it was proposed.

15 You've got an industry that has built an
16 infrastructure that has made commitments that they will
17 get people to compliance with this law. You've got cities
18 and counties that are worried about it. And I think it's
19 critical that we support that. Now, if that means we have
20 to put this over for a month without prejudice to maybe
21 talk about some of the evaluation issues, or maybe it's
22 even taken the work you did in 31 and just putting those
23 numbers in, I mean, Mr. Eaton and I were saying the exact
24 same thing. We just said it a little bit differently.

25 Well, you know what I mean. I'm a garbage man.

1 I don't always talk right.

2 (Laughter.)

3 BOARD MEMBER JONES: But you know what I'm
4 saying. There were percentages assigned to all those
5 different types of programs. That's not part of this.
6 And it probably needs to be in the future. And if nothing
7 else, the cities need it as a tool to make sure that they
8 understand where they're going.

9 That being said, we did 31. I think this could
10 go out, but I'm going to wait till I see some heads either
11 telling me they don't want to vote on it or they do. But
12 I think it sends a strong message that we support SB 1066,
13 we support the cities and counties, if we give this
14 extension.

15 Because the flip side is everybody in the world
16 will start worrying about it tomorrow, that we're ready to
17 start passing out the fines, or putting them on compliance
18 orders, and that's a tough balancing act, and one that's
19 real.

20 DEPUTY DIRECTOR SCHIAVO: Madam Chair, I'd just
21 like to make another comment. This particular one again
22 we have much more information, because the base year was
23 just completed, staff was out in the field, had the
24 opportunity to audit the program, so there's a certain
25 level of comfort. And also, again, this is a creation of

1 a new base year, which builds from the program base out.

2 In some of the future ones, there is the
3 potential that we're going to be seeing ones that were
4 built based on the base year in 1990 using a disposal
5 reduction system in which you don't know the specifics of
6 the program, when we received them.

7 So we've got two things going on. That's why I
8 was referring to some others coming in the future. And,
9 again, we wanted to bring this one forward, because it was
10 a little bit cleaner, because it had the feature of, you
11 know, the base year being heard, so we have a little bit
12 more clarity on what we're working with. And we won't
13 necessarily have that with some of the future ones.

14 Part of the reason the Board went through
15 workshops with a lot of the jurisdictions, a lot of them
16 had a fear of having to do a whole new SRRE, back when we
17 were trying to accommodate that as much as possible by
18 streamlining this process.

19 But we still need to do the program evaluation.
20 The question is at what level of detail does the Board
21 expect. And there may need to be some more discussion on
22 that.

23 CHAIRPERSON MOULTON-PATTERSON: Two things.
24 First of all, you know I want to make clear my position is
25 nothing against the City of Loma Linda. It certainly

1 doesn't mean -- if we continue this for month, it doesn't
2 mean I want to pass out fines or put people on compliance.
3 It has nothing to do with that.

4 It's I want to do it right. And if you can tell
5 me that you feel very comfortable that this is a good
6 1066, and it's staff's recommendation that this should be
7 the one, then I'll probably vote for it.

8 But you're telling me that this is, you know, in
9 staff's opinion --

10 DEPUTY DIRECTOR SCHIAVO: Well, again, we have a
11 comfort level because staff was out in the field. They
12 were able to see the programs. And so this is going to be
13 unique from some of the ones we will see in the future.

14 But what would help would be, you know, maybe we
15 need to have some kind of work group to work out some more
16 details on it as far as expectations for some of the ones
17 in the future, because we won't have the advantage of
18 having the base years with all, you know, the diversion
19 laid out nicely next to each type of program that's
20 currently operational, because of our disposal reduction
21 system where we look at how much waste is being reduced.
22 You know, through the adjustment factors and all that, it
23 just comes in as a number, and we don't know all the
24 details of the programs.

25 And, you know, if you look at the list of the

1 programs, you know, there's 20, 30, 40 programs. In some
2 cases you don't know what each one -- how much each one --
3 diversion from each one of those programs. We're with
4 that advantage in this one.

5 CHAIRPERSON MOULTON-PATTERSON: Mr. Medina wanted
6 to speak.

7 BOARD MEMBER MEDINA: Yes, Madam Chair. I
8 thought that what Ms. Hunter had to say made a lot of
9 sense. And given staff's comfort level, I was prepared to
10 second Mr. Jones' motion to move this forward.

11 At the same time, I am concerned that these
12 jurisdictions are so far off the mark. I mean, coming
13 from San Francisco and having taken these issues up when I
14 was with the Board of Supervisors, and seeing what efforts
15 the City makes, aggressive efforts on all these programs
16 and have a difficult time meeting the 50 percent, I am
17 concerned that some of these jurisdictions are so far off
18 the mark.

19 And I do think that, you know, our staff needs to
20 work more closely with these jurisdictions that are so far
21 off the mark. But on balance, I'd be prepared to second
22 Mr. Jones' motion.

23 CHAIRPERSON MOULTON-PATTERSON: That's fine.
24 Okay, we have -- but Mr. Paparian we have a motion, and a
25 second and a comment by Mr. Paparian.

1 BOARD MEMBER PAPARIAN: My comfort level has sort
2 of gone up and down here, the various people's
3 descriptions of the precedent. You know, if I was
4 convinced that a vote here today on this item would not
5 set any precedent at all for future 1066 requests, I'd be
6 very happy voting for it. I'm comfortable with the
7 description in combination with the item before it.

8 I just as soon see this thing held back, maybe
9 add some more clauses in the resolution to make clear and
10 narrow down, you know, whatever precedent we are setting
11 here, so that we're able to go back when a locality comes
12 back in the future with a document just like is there an
13 Item 32, so that we have some legs to stand on and telling
14 that locality that that's not enough, and you can't rely
15 on the Loma Linda precedent.

16 BOARD MEMBER JONES: Can I?

17 CHAIRPERSON MOULTON-PATTERSON: Yes, and then Mr.
18 Eaton, I'd like your comments, too.

19 BOARD MEMBER EATON: I plan on distinguishing
20 myself from Mr. Jones.

21 (Laughter.)

22 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones, do you
23 want to go first?

24 BOARD MEMBER JONES: Well, I can -- when I make
25 this motion, I will try to include language -- I haven't

1 made it yet, but I will include -- I will try to include
2 language that ensures that it is predicated on that Item
3 31, and that it's not precedent setting. So when it gets
4 to that time, I'll put that in motion.

5 CHAIRPERSON MOULTON-PATTERSON: Thank you.
6 Mr. Eaton.

7 BOARD MEMBER EATON: Well, first and foremost,
8 you know, the level of specificity that you're looking for
9 is that each of us, and I look at it and sometimes I don't
10 present it that way, but it is a partnership. And by our
11 action we are entering into a partnership with the City in
12 saying we are going to pull with you, and that we agree
13 that your corrective action plan is the way to get there.

14 So if three years from now it all fails, and
15 everyone points their fingers at the Board, and I was
16 here, when all the other good faith efforts came on 25
17 percent, and they said well, you approved us as a good
18 faith effort, and I don't want that to happen again.

19 We all know that in their multi-family
20 programs -- and I'm sorry Senator Roberti isn't here
21 because he worked on multi-family apartments. They're
22 very difficult to implement. And there's no analysis that
23 somehow this two percent -- how many apartments are we
24 talking about? How many people live in these apartments?
25 Are we talking about 10,000 residents or are we talking

1 about a series of six units.

2 I don't know that. Do you know that? Well, you
3 told me -- no, you told me you audited the program.

4 DEPUTY DIRECTOR SCHIAVO: The existing programs.

5 BOARD MEMBER EATON: Well, this is a new program,
6 right. And that you think a few little trash cans in and
7 around a civic center is going to generate that kind of
8 diversion in recapturing.

9 I mean, the whole idea here is not to sort of,
10 you know, just rubber stamp and get going. It's really to
11 move it forward and to say we don't want the taxpayers of
12 Loma Linda to spend money on senseless programs just
13 because they are programs.

14 We should use -- after all, we spent how much
15 money going out to other jurisdictions with Gary Liss's
16 case studies to find out what they will generate with
17 similar types of programs. And none of that analysis is
18 in here. You're just punting to the jurisdiction and
19 that's not right.

20 There is information here, Mr. Jones. Our staff
21 is capable of making an analysis and directing and saying,
22 you know, in the past those have not been cost effective
23 for jurisdictions such as yours, but we will support you
24 if that's the way you want to go, but know full well that
25 those jurisdictions do not generally generate that kind of

1 diversion. And that's the point we have to make here with
2 1066.

3 And I tell you, some of you may be here, some of
4 you may not be here. In three years this City is going to
5 be back here if you give them three years extension,
6 saying well, you gave it to us and you approved our
7 corrective action plan, what do we do. So in so, the
8 university said they don't want to do it, what are we
9 going to do?

10 It's just putting it on its head. When you have
11 someone who hasn't been able to succeed for whatever
12 reason, you need to closely monitor their progress. And
13 their progress is not just in the annual report, it's
14 coming back and saying what programs work, what programs
15 don't work, and what programs can we help you with. Maybe
16 you need to apply for some grant money.

17 I don't ever remember seeing a grant come through
18 Loma Linda, quite frankly, for any program, other than
19 what they get in their per capita stuff. None of that's
20 here.

21 That's the kind of corrective action plan that I
22 look at for creativity and for a basis by which to say
23 let's enter into that partnership, because by your
24 approval, you are saying we agree with your plan and we
25 think it's the only way to go.

1 I'm not prepared to do that with Loma Linda.

2 BOARD MEMBER PAPARIAN: Madam Chair.

3 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones and
4 then Mr. Paparian.

5 BOARD MEMBER JONES: Just to respond. Mr. Eaton
6 and I have had this debate for about four years, so
7 it's -- or three years. I don't think there's anybody at
8 this Board that could go into a city and evaluate
9 accurately participation rates evaluate accurately does a
10 plan work or doesn't it work for a jurisdiction.

11 Those are issues that are dealt with on a local
12 issue and they're -- at a local basis, and they're dealt
13 with based on a whole series of different things. And I
14 wouldn't presume that any of us here could do it. I know
15 I couldn't do it, not in a one-day cursory review.

16 What I was asking for a level of detail was to
17 use that as a tool for the City to really focus on what
18 they do. I'm not making a mandate. You know, we spend a
19 lot of time talking about our approval. Our approval is
20 an amendment really to an SRRE, an SRRE that said these
21 programs should get us to 50 percent, and they haven't.

22 But they've learned something. They've put some
23 of the stuff in place. They've still got a heck of a long
24 way to go. They think the expansion of those programs and
25 these new programs can get them there. And if it doesn't,

1 it doesn't. I mean there are certain areas, believe it or
2 not, that if you were 100 percent successful in diversion,
3 you wouldn't get 45 percent out of the waste stream. It's
4 just a fact of life. It depends on what's being generated
5 somewhere.

6 And I think three years, when it takes you a year
7 and a half to get a truck, you know, we'll have a heck of
8 a lot of people coming forward in one year saying we've
9 placed the order, but we're still 14 months out. That's
10 just a fact of life. I mean that just happens.

11 And as long as our staff does evaluations yearly,
12 gets a report back from the City on how are they doing, is
13 there the ability if they find out -- they still have a
14 mandate to get 50 percent. They can still add to this,
15 right. They're not precluded if this little composting
16 thing at the hospital doesn't work, they're not precluded
17 from going and trying another program.

18 So I mean I think this gives the flexibility, and
19 it's not the manuscript, just like 50 percent is not the
20 number. I mean it's garbage.

21 BOARD MEMBER EATON: Do you see any market
22 development component to this corrective action plan, Mr.
23 Jones?

24 BOARD MEMBER JONES: No.

25 BOARD MEMBER EATON: Don't you think that should

1 be part of what we do?

2 BOARD MEMBER JONES: It's just like I was talking
3 about on the education. That's why I want to see the
4 evaluations. I do know that their hauler is Waste
5 Management who does have a market development program.
6 They have a very -- some I like, some I didn't like, and
7 we know what some of them are.

8 Go ahead.

9 CHAIRPERSON MOULTON-PATTERSON: I'm going to call
10 on Mr. Paparian in just a moment. But Mr. Schiavo, I do
11 think your suggestion was really good. You need a
12 workgroup. I mean we want to work with you on this.
13 We're just, you know, the ones held accountable. This is
14 really important to us.

15 So regardless of how this goes, I think we need
16 to have a workgroup. And so this is laid out in a way
17 that everybody can get the information they want before we
18 make an important decision.

19 Mr. Paparian.

20 BOARD MEMBER PAPARIAN: Yes, Madam Chair, I'm
21 inclined to want to wait a month on this, and get some
22 good language in the resolution that we all can have a
23 chance to look at and feel comfortable that it addresses
24 the issue of precedents and the type of precedent we want
25 to set. But I don't want to put you on the spot. You

1 said before you'd like to put this over.

2 CHAIRPERSON MOULTON-PATTERSON: I don't think
3 we'd hurt anything by waiting a month. And to the City of
4 Loma Linda, we really do want to work with you, and we
5 want this to work. And I agree with Mr. Eaton on the
6 partnership. And so this is really important to us, and I
7 would be more comfortable if we continued it. And this is
8 something we have to work out, it's not a reflection on
9 Loma Linda.

10 MR. BARTON: May I?

11 CHAIRPERSON MOULTON-PATTERSON: Yes.

12 MR. BARTON: Thank you. Just a couple of things.
13 If we wait a month, we wait a month. That's your
14 decision. I mean, frankly, we would like you to approve
15 it now, and we'd like it to be for three years. I mean,
16 but we understand your concern and we understand this is
17 the first one you've looked at.

18 A couple of things as far as working with the
19 staff and analyzing these programs, I need to say that the
20 staff that you have has been really, really great to work
21 with. They've guided us. They've helped us and you
22 should be proud of them, because --

23 CHAIRPERSON MOULTON-PATTERSON: We are.

24 MR. BARTON: We really like working with them.
25 And I think they have analyzed the programs. We have

1 percentages here and the reason we have percentages here
2 is because they've been analyzed.

3 On the wet waste, if things were to go as we
4 think, it could generate from 1,600 to 3,200 tons. I know
5 that's a wide range, but you don't know until you try,
6 which is, I think, what Mr. Jones is saying.

7 So we appreciate your listening. We appreciate
8 your looking at this. I'm assuming that you're going to
9 look at just holding it over without prejudice.

10 CHAIRPERSON MOULTON-PATTERSON: Absolutely
11 without prejudice. And Mr. Jones might still want to go
12 for a motion, but I would feel more comfortable with 30
13 days.

14 BOARD MEMBER JONES: I'm not going to put my
15 other board members at that kind of risk. I'm just not
16 going to do it. It's not worth embarrassing anybody over.
17 But I will tell you that, I mean, we can hold it over
18 without prejudice, but this is not brain surgery. I mean
19 this is the difference between what somebody puts in a bin
20 one day and what they don't. You know, these people don't
21 control that.

22 So this map that they have augmented their SRRE
23 with, I think is the right direction. But I'm not going
24 to make a motion that isn't going to be supported.

25 CHAIRPERSON MOULTON-PATTERSON: Okay. So we will

1 continue it for a month and hopefully get on the same
2 page. And thank you for your work.

3 BOARD MEMBER EATON: Madam Chair, can I say one
4 quick thing. How many more of these are we going to have
5 coming to us in the next three months?

6 DEPUTY DIRECTOR SCHIAVO: Well, we were looking
7 at bringing, as I mentioned, maybe 80 or 90 in April, but
8 I think we're going to have to push that back, because --

9 BOARD MEMBER EATON: Do you have those
10 applications already?

11 And the only reason why I'm asking is because it
12 would be helpful at least, and I'll speak for myself, to
13 make the personal request, that I would like each and
14 every corrective action plan at least three weeks or a
15 month in advance.

16 You have to have them. You just can't get them
17 in two weeks and turn them around and put them on the
18 agenda. These applications are already in, are they not?

19 MS. MORGAN: A number of them are in and a number
20 of them have not been submitted.

21 BOARD MEMBER EATON: But I mean, we can at least
22 look at them and avoid some of these questions and maybe
23 we can solve them in a different manner, other than at the
24 Board meetings if we have questions? You can either, you
25 know, through the consultants or whatever get answers to

1 them.

2 But it would really be helpful, at least for some
3 of the programs to have these in advance, at least for my
4 office. I don't care if anyone else doesn't want to look
5 at them. Mr. Paparian knows the feeling. He looked at
6 all the AB 75 documents from time to time. And, you know,
7 I looked at a few, so at least for me I'd like to look at
8 them.

9 CHAIRPERSON MOULTON-PATTERSON: And our office
10 would, too.

11 So thank you.

12 Okay, Item number 33.

13 DEPUTY DIRECTOR SCHIAVO: Item Number 33 is
14 consideration of Board options for reducing impacts from
15 State and Federal construction and demolition projects on
16 jurisdictions' diversion rate achievement.

17 And Catherine Cardoza will be making this
18 presentation.

19 MS. CARDOZA: Good afternoon, Madam Chair and
20 Board Members. Staff presented a related discussion item
21 at the October briefing and November Board meeting, in
22 which six possible options for dealing with the impacts of
23 C&D waste from State and federal projects were discussed.

24 One of those options deducting the C&D disposal
25 tonnage from the jurisdiction's reporting year disposal

1 amount has not previously been offered as a remedy for
2 this particular problem.

3 The Board, however, felt it was an option worth
4 exploring, so staff was directed to conduct public
5 workshops, one in northern and one in southern California,
6 to obtain feedback from interested parties on how this
7 option could be applied.

8 The first workshop was held December 18th in
9 Sacramento, and the second the following day in Laguna
10 Nigel in Orange County. About 20 people attended each
11 workshop.

12 We divided the discussions into three main
13 subject areas with associated questions under each. The
14 first discussion area was to what kinds of C&D projects
15 should this option apply.

16 The second, how should any adjustments be made.

17 And the third was what responsibility does a
18 jurisdiction have to promote the diversion of C&D waste
19 from a project outside its control.

20 We listed the comments we received from the
21 workshops in Attachment 1 of this item and we summarized
22 the comments in the agenda item itself.

23 Based on the feedback received at the workshops
24 and staff analysis of that feedback, it is recommended
25 that the following factors be considered when deciding

1 whether to allow this option in a given situation.

2 First, this option should be limited to C&D
3 projects over which a jurisdiction has no control for the
4 disposal or diversion of the C&D waste, for example, State
5 and federal agency projects; projects over which a State
6 or federal agency has the final authorizing authority for
7 the project's waste management plans, for example a
8 powerplant; quasi-governmental agency projects, like the
9 Bay Area Regional Transit or BART project; or local
10 projects over which the jurisdiction making the claim has
11 no control, for example, when a project is under the
12 control of a county, but the project also occurs at least
13 partly within the jurisdiction making the claim.

14 The second recommendation is if the C&D projects
15 waste impacts the jurisdiction's compliance with the
16 diversion requirement, then a deduction should be allowed,
17 regardless of the percent impact.

18 Third, regarding limitations related to a project
19 size or duration, multiple year projects, say one to three
20 years of any size should be considered, but the deduction
21 claim must take place annually.

22 Fourth, any tonnage adjustment should be limited
23 to disposal deductions, because if a jurisdiction wants to
24 also count the diversion, the option to conduct a
25 degeneration study is already allowed.

1 Fifth, regarding documentation requirements,
2 staff recommends that jurisdictions claiming such a
3 deduction must rewrite tonnage reports verifying that the
4 tonnage being claimed was, in fact, generated by the
5 project in question, and within that jurisdiction's
6 boundaries. Types of documentation should include
7 landfill weight tickets or other records used to estimate
8 the tonnage.

9 Six, to be considered for disposal deduction,
10 jurisdictions should be required to demonstrate that a
11 reasonable level of effort had been made to divert the
12 waste.

13 Lastly, it was agreed that jurisdictions should
14 also provide information explaining how the project's
15 waste disposal or diversion was outside of its control.

16 For the most part, the responses were very
17 similar at both of the workshops. The main difference was
18 a stronger focus on self-haul related issues with the
19 southern California participants.

20 To implement the option, staff is proposing an
21 expedited submittal process so as not to hold up for too
22 long any biennial reviews that might be affected by this
23 option should the Board approve it.

24 The process would include asking jurisdictions
25 that wish to make such a claim to notify Board staff of

1 their intent within 30 days of Board action on this item.
2 Then a jurisdiction should submit its claim within 60 days
3 of submitting its letter of intent.

4 Staff proposes to revise the existing reporting
5 year disposal modification certification sheet so that
6 such claims could be submitted using that existing
7 certification sheet.

8 Once staff receives a claim they would bring the
9 request forward on a case-by-case basis for board
10 approval.

11 Lastly, I would like to follow up on an
12 information request from the Board that they made at last
13 November's board meeting when this item was being
14 discussed.

15 The Board's legal office is currently in the
16 process of researching what effect, if any, the ownership
17 of State Highways would have on how any C&D material could
18 be counted.

19 That concludes my presentation. Are there any
20 questions?

21 CHAIRPERSON MOULTON-PATTERSON: Mr. Eaton.

22 BOARD MEMBER EATON: Yeah, I think this Option 6
23 is going down a really, really slippery slope here. And
24 I'll tell you why. If indeed a city doesn't have control
25 over a project with a county, then is the County charged

1 with that entire disposal?

2 DEPUTY DIRECTOR SCHIAVO: No, the City is --

3 BOARD MEMBER EATON: No, the City has no control.

4 MS. CARDOZA: It depends on --

5 BOARD MEMBER JONES: Yeah, but it's the City's
6 jurisdiction.

7 BOARD MEMBER EATON: Correct. So under your
8 Option 6, the City would not be charged with that, but
9 would the County get the full boat then?

10 You're shaking your head no, then who gets it?
11 If it's a county project, you're talking about State and
12 federal projects here, and now we have a county project,
13 so doesn't the County get hit with the ticket?

14 MS. CARDOZA: It would depend on when the waste
15 went to the landfill which jurisdiction was counted, was
16 allocated that tonnage, whether it was the County or the
17 City.

18 What the cities are saying that if the County is
19 the one controlling the waste management plan --

20 BOARD MEMBER EATON: The project.

21 MS. CARDOZA: The project, and that plan does not
22 include diverting the waste, and if the waste was coming
23 from within the City's jurisdiction, they couldn't say
24 that you have to divert it. And so any that is going
25 against them from that project, they wish to deduct that.

1 BOARD MEMBER EATON: So the County would be
2 charged for that?

3 MS. CARDOZA: The county wouldn't be.

4 BOARD MEMBER EATON: Why, they're the ones who
5 initiated the project?

6 DEPUTY DIRECTOR SCHIAVO: It's within the
7 boundaries of the City.

8 BOARD MEMBER EATON: I understand, but that's the
9 slippery slope I'm trying to get at. You're telling me
10 that it's State and federal and now we have another local
11 jurisdiction which is subject to 939 that's initiating the
12 project.

13 BOARD MEMBER JONES: Just for clarification,
14 which was when I asked for this item it was to include
15 federal, State and then issues that were outside of the
16 control, anything.

17 BOARD MEMBER EATON: But then that county has
18 control over that project.

19 BOARD MEMBER JONES: No. The county -- I
20 think -- well, I'll let these guys do it, but what I'm
21 saying is the County may be the one that has the ordinance
22 or that's supposed to provide the infrastructure and it
23 doesn't, so why should the City get charged for that
24 material as one --

25 BOARD MEMBER EATON: I understand that, but the

1 County should then, because it's the County who initiated
2 it, is it not?

3 DEPUTY DIRECTOR SCHIAVO: No. That's why it's an
4 issue, is that it's generated within the City's
5 boundaries. By statute, anything generated within the
6 boundaries --

7 BOARD MEMBER EATON: I understand that.

8 DEPUTY DIRECTOR SCHIAVO: That's why it's an
9 issue and that's why we're bringing it forward. It's one
10 of the things we're looking at.

11 BOARD MEMBER EATON: Isn't a better way, because
12 now, I mean, you're going to do the timeframe, we're going
13 to get the notice out within the next two days, and then
14 you're going to have 60 days, supposedly -- or 30 days by
15 which to basically have them, you know, signify that
16 they've got notice. And then they have 60 days in which
17 to fill out their forms, and then you'll have to look for
18 verification. And you're asking us to deduct all of that.

19 Isn't a better way is to have the cities and the
20 counties look and say what is disputed, because weight
21 tickets alone are not going to be determinative. I can
22 come up with all kinds of weight tickets that shows C&D,
23 but it may not necessarily be a state or federal project.

24 I don't want to get into trying to verify
25 thousands of things. What I'm trying to get at is that if

1 we, as a Board, get to look at what a city or a county is
2 claiming impacted their diversion, I at least have the
3 ability to say okay this amount impacted it by X, but as a
4 whole, even if we take that out of the equation, they
5 still are only at 47 percent, as opposed to 68 percent.
6 Or maybe the situation is is that with the C&D, as you
7 mentioned, Mr. Schiavo, in the past, it may hurt them,
8 that they are at, you know, 52 percent, but without this
9 diversion, they're at 28.

10 I don't think an automatic deduction in us having
11 to verify another item, it's just like source reduction
12 the thing we were tired of doing. I don't have a problem
13 in terms of someone not having the ability to control its
14 own weight from having consideration.

15 What I am concerned about is how we then make an
16 evaluation and judgment of that, and that's what Option 6
17 does not contain presently.

18 DEPUTY DIRECTOR SCHIAVO: Option 6, the
19 jurisdiction must show why they didn't have control. They
20 have to have documented proof such as --

21 BOARD MEMBER EATON: It's a state or federal
22 project, of course they're not going to have control. I
23 understand that. The question is, you know what will
24 there be. Are they willing to give up then under the
25 statute that if they initiate it, that they don't get

1 diversion as well?

2 That's the other hidden tool, right, for the
3 local governments. That's the silver bullet.

4 DEPUTY DIRECTOR SCHIAVO: Not in this.

5 BOARD MEMBER EATON: If they initiate it --

6 DEPUTY DIRECTOR SCHIAVO: No, initiated wouldn't
7 mean diversion.

8 BOARD MEMBER EATON: They get diversion.

9 DEPUTY DIRECTOR SCHIAVO: We're talking within
10 the boundaries of where it's generated. And we were
11 looking at issues of where disposal is affecting adversely
12 a jurisdiction's diversion rates, where they don't have
13 control over it.

14 In this particular example, the City became
15 incorporated. The County started the process with a
16 housing development. If the City can prove that is the
17 case with documentation showing that timeframes and every
18 act, it's incumbent upon the City to show that, show why
19 it was not in their control, show those tonnages, it's
20 again, incumbent upon them to show proof to the Board and
21 staff those tonnages, and they have to build that. It's
22 not an automatic process.

23 It's case by case, such as we deal with on Class
24 2 issues. The same as restrictive wastes, there's certain
25 criteria and the criteria laid out here is very similar as

1 far as showing that proof to us.

2 And, you know, that's what we're trying to
3 accomplish here, and that's what we were directed to look
4 at.

5 BOARD MEMBER EATON: I understand that you were
6 directed to look at it and come back with an option that
7 is a finality, without a lot of the details being in
8 there, such as, you know, the right verification and how
9 that's going to be done, and will there be a comparison.
10 Because if I were a city or a county, I would go back
11 through, get the form adjusted and I would be able to
12 reduce my disposal tremendously, while, you know, at the
13 same time increase my diversion by virtue of the reduction
14 in the generation numbers very easily.

15 I'm just trying to get a sense of, I understand
16 the impact. I don't have a problem with that. I think
17 it's unfair. I am worried about how we are going to
18 account for and under what manner that we will be
19 presented with it so that we can make an evaluation.

20 I don't want to go after it like Sherlock Holmes
21 and try and track down weight tickets and all the other
22 stuff. But there should be a way in the biennial review
23 that says we had 100,000 tons of C&D that was beyond our
24 control.

25 And if we took that out and we had these

1 programs, here's what our diversion rate would be. And if
2 we include in here what our diversion would be as well,
3 much like what you said, with some of these it's going to
4 hurt them. And what do we do with those that have already
5 had base years, because one of the options was a base year
6 adjustment, correct, or was that just a remedy? The only
7 option we have here is 6.

8 DEPUTY DIRECTOR SCHIAVO: The option we're
9 looking at is 6.

10 BOARD MEMBER EATON: No. The only option we have
11 here is 6, so that when you had key options, options 1
12 through five really aren't options, they were just things
13 we used in the past.

14 DEPUTY DIRECTOR SCHIAVO: Prior options.

15 BOARD MEMBER EATON: Right, so they're really not
16 options.

17 DEPUTY DIRECTOR SCHIAVO: They are what they are.

18 Option 6 is what we focused on. And we were
19 including the information regarding it being out of the
20 control of the City, much like we were looking at
21 quasi-governmental agencies, such as BART and others, we
22 were looking at providing the Board with flexibility
23 again, because it's on case by case, and we wanted to look
24 at those cases we're hearing about out in the field. It's
25 up to the Board to decide if they want to include, you

1 know, the example that we're talking about right now.

2 What we're bringing forward to the Board, these
3 are the examples. This is what we're hearing through the
4 workshops that we were directed to conduct with those
5 jurisdictions and with the representatives. Again, it's
6 your option what you want to report.

7 But we wanted to provide you with as much
8 flexibility, because we know in the future there will be
9 unforeseen activities out there that we never thought of
10 when we were going through this process. So that's why
11 we're trying to be flexible.

12 CHAIRPERSON MOULTON-PATTERSON: We do have a
13 speaker on this.

14 Paul Relis.

15 MR. RELIS: Madam Chair and members of the Board,
16 at the south workshop that was referred to, a case in
17 point that was a case study for this to some degree. You
18 have San Juan Capistrano city with 44 percent self-haul.

19 It's in a location where the regional landfill is
20 part of the City, and there is no C&D infrastructure in
21 that whole south county. So we're looking at it where the
22 CR&R -- I'm sorry, I didn't represent, I'm with CR&R, is
23 looking at how do we get control of 44 percent. The
24 objective is to try and get the County to establish a C&D
25 facility at the regional landfill that would address this

1 C&D.

2 But there's a whole new town being developed
3 within San Clemente, parts of it being annexed as we go,
4 that we believe is a major contributor to this large
5 number and C&D number. And it's a conundrum.

6 And so this was discussed. I don't know how it
7 gets resolved other than establishing a facility, and that
8 will be part -- when I was here earlier listening to the
9 1066 discussion, that's a piece of this City's option for
10 1066 is establishing such a facility.

11 So in looking at the staff resolution, it looked
12 like it had the makings of a way to deal with such a
13 situation. There are probably other ways to do it.

14 But at this juncture with the information we
15 know, we would support an Option 6. It may need more work
16 on it and more safeguards, but we saw it as a piece that
17 would be based on and predicated upon an evaluation of
18 other things happening, such as in the 1066 plan that held
19 jurisdictions' feet to the fire.

20 That's about all I can say. It's a very involved
21 discussion. It's in the annual report. It's in the -- it
22 will be in the 1066 plan, but that's the basis for my
23 being here and listening to this and trying to recommend
24 that something be done on that.

25 Thank you.

1 BOARD MEMBER EATON: I understand that, Mr.
2 Relis. But one of the things that I'm trying to get at
3 and I didn't explain it very well, is for us to have that
4 picture. And my fear is, and you sat in this chair
5 before --

6 MR. RELIS: Yes.

7 BOARD MEMBER EATON: -- that once these
8 deductions start to take place, they no longer become the
9 situation that you speak of and the problem that you have
10 encountered or someone else has encountered. It rather
11 becomes a way for individuals to play a numbers game. And
12 that's what I don't want, and that's what this option
13 looks like.

14 I'd rather be able to have us look and say here
15 is what's taking place here. What Option 6 does is they
16 want to bring these items before the Board as a mini base
17 year correction, and at times in the year 2000, all the
18 biennial reports are in.

19 So now everyone is plagued by the rules for the
20 last ten years, but now we're going to reopen just a small
21 part of that.

22 MR. RELIS: Mr. Eaton, just one point --

23 BOARD MEMBER EATON: But I think it can be
24 handled in a different way to get at your point.

25 MR. RELIS: I thought, though, that the position

1 of staff is that it is that, it is case by case, because
2 you couldn't -- if you went to a blanket approach like
3 this, I think it would produce exactly the result that
4 you're saying. It could be applied cynically and then
5 lead to a whole unintended consequence, and with detective
6 work to go along with it.

7 But we were posing it in the context, here is a
8 real case, so what's the resolution to this case, and
9 that's what we saw Option 6 trying to do.

10 Thank you.

11 CHAIRPERSON MOULTON-PATTERSON: Thank you.

12 I know John Cupps wants to speak, but I just have
13 a real quick question and maybe I don't understand it.
14 But I was thinking when you were explaining all this, Pat,
15 about south Orange County, the Board of Supervisors there
16 has proposed huge developments, and in the middle of this
17 cities are incorporating and they've had no control over
18 this. Is this -- would this be --

19 DEPUTY DIRECTOR SCHIAVO: That's what I'm
20 referring to. That's what we're hearing from Orange
21 County.

22 CHAIRPERSON MOULTON-PATTERSON: John Cupps.

23 MR. CUPPS: Just real briefly. John Cupps. I'm
24 a consultant with San Luis Obispo County Integrated Waste
25 Management Authority.

1 We do support the staff's recommendation. We are
2 looking at a proposed project by Duke Power in the City of
3 Morrow Bay that is basically a total rebuilding of the
4 Morrow Bay Powerplant.

5 When they demolish the old powerplant, that is
6 projected to create something like 183,000 tons of
7 demolition debris in and of itself.

8 Since the Energy Commission essentially has
9 preemptive siting authority, the local entities have no
10 control over that waste stream. We have participated in
11 the Energy Commission's certification process. We think
12 we have a commitment from Duke that they intend to recycle
13 80 percent of the waste from that demolition project.

14 Nonetheless, that would leave approximately 20
15 percent of the waste in excess of 20,000 tons, which we
16 believe would significantly impact the jurisdiction's
17 diversion rate.

18 We feel the staff has set forward in as much
19 detail as they really can the types of considerations that
20 you ought to look at on a case-by-case basis in making a
21 determination as to whether or not you actually grant a
22 deduction under Option 6, that is, you know, deduct the
23 disposal amount.

24 The key issue really from my perspective are
25 really two-fold. One is whether or not you really had

1 control over that waste stream, and secondly, whether or
2 not you've really made an effort to, in fact, get that
3 material recycled. Those are the two key issues.

4 I think by approving this, by approving the staff
5 recommendation, the Board is still in full control to be
6 able to make those decisions on a case-by-case basis.

7 Thank you.

8 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.
9 Cupps.

10 Any other comments?

11 BOARD MEMBER JONES: Madam Chair.

12 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones.

13 BOARD MEMBER JONES: I want to move adoption of
14 Resolution 2002-49, Consideration of Board Options for
15 reducing impacts for State and federal construction and
16 demolition on jurisdictions' diversion and achievement.
17 And I have a question, do I need to include the words "and
18 other" as you did in the item? Here, you've just said
19 State and federal.

20 DEPUTY DIRECTOR SCHIAVO: Yeah, that would be a
21 good idea.

22 BOARD MEMBER JONES: "And others." Can I restate
23 it, Madam Chair, just to make sure there's no confusion?

24 CHAIRPERSON MOULTON-PATTERSON: Yes.

25 BOARD MEMBER JONES: Consideration of Board

1 option for reducing impacts from State, federal and
2 others -- other construction and demolition projects on
3 jurisdictions' diversion rate achievement.

4 BOARD MEMBER MEDINA: Second.

5 CHAIRPERSON MOULTON-PATTERSON: We have a motion
6 by Mr. Jones seconded by Mr. Medina to approve Resolution
7 2002-49 with the change that he read in.

8 Please call the roll.

9 SECRETARY VILLA: Eaton?

10 BOARD MEMBER EATON: Abstain.

11 SECRETARY VILLA: Jones?

12 BOARD MEMBER JONES: Aye.

13 SECRETARY VILLA: Medina?

14 BOARD MEMBER MEDINA: Aye.

15 SECRETARY VILLA: Paparian?

16 BOARD MEMBER PAPARIAN: Aye.

17 SECRETARY VILLA: Moulton-Patterson?

18 CHAIRPERSON MOULTON-PATTERSON: Aye.

19 That brings us to Item 35.

20 DEPUTY DIRECTOR SCHIAVO: Item number 35 is
21 Consideration of approval of California State University,
22 Sacramento as contractor for statistical waste stream
23 analysis. This is for the fiscal year 2001 and 2. And
24 this is Contract Concept number 7.

25 And Tim Hall will be making this presentation.

1 MR. HALL: Good afternoon. My name is Tim Hall
2 from the Waste Analysis Division. Item 35 is
3 consideration of approval of California State University,
4 Sacramento as contractor for statistical waste stream
5 analysis. Item 34, the scope of work was approved
6 yesterday.

7 We've designed the scope of work in a way that
8 will allow the Board staff to do much of the work and have
9 the contractor advise and review. By working it this way
10 in going with the contractor with low overhead, we will be
11 able to maximize what we get out of the contractor.

12 This has worked well on the current contract that
13 we have. And, in fact, much of the analysis in the SB
14 2202 report appendices was completed this way.

15 Item 35 awards the contract to California State
16 University, Sacramento. I've discussed some of the
17 analyses with the professor in the Economics Department,
18 and he's very interested in the work, and said he can
19 provide statisticians from both the economics and the
20 statistics department. Their overhead fees are 15
21 percent.

22 Board staff recommends the Board approve
23 Resolution number 2002-51 and award the contract for
24 statistical waste stream analysis to CSU, Sacramento.

25 I'd be happy to answer any questions.

1 CHAIRPERSON MOULTON-PATTERSON: Thank you.

2 Any questions?

3 BOARD MEMBER JONES: Madam Chair.

4 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones.

5 BOARD MEMBER JONES: I'll move adoption of
6 Resolution 2002-51, consideration of approval of
7 California State University, Sacramento's contractor for
8 statistical waste stream analysis, fiscal year 2001/2,
9 Concept number 7.

10 BOARD MEMBER MEDINA: Second.

11 CHAIRPERSON MOULTON-PATTERSON: Motion by Mr.
12 Jones seconded by Mr. Medina to approve resolution
13 2002-51.

14 Please call the roll.

15 SECRETARY VILLA: Eaton?

16 BOARD MEMBER EATON: Aye.

17 SECRETARY VILLA: Jones?

18 BOARD MEMBER JONES: Aye.

19 SECRETARY VILLA: Medina?

20 BOARD MEMBER MEDINA: Aye.

21 SECRETARY VILLA: Paparian?

22 BOARD MEMBER PAPARIAN: Aye.

23 SECRETARY VILLA: Moulton-Patterson?

24 CHAIRPERSON MOULTON-PATTERSON: Aye.

25 The last item is 36, and then we have one public

1 comment.

2 DEPUTY DIRECTOR SCHIAVO: Item number 36,
3 Consideration of staff recommendations regarding
4 enforcement options for jurisdictions that have failed to
5 complete compliance orders for Source Reduction Recycling
6 Element and the Household Hazardous Waste Element
7 implementation including public hearing procedures and
8 criteria for penalties. And this presentation will be
9 made by Elliot Block of our legal staff.

10 STAFF COUNSEL BLOCK: The second day in a row I
11 was the last item of the day. I'll make it very quick.

12 As you know, the Board issued 65 compliance
13 orders for the 95/96 biennial review. We still have
14 currently 20 compliance orders that are in-house that the
15 Board is still looking at. This year we will be looking
16 at the 99/2000 biennial review.

17 In the past, the Board has adopted hearing
18 procedures and criteria for dealing with potential
19 penalties for jurisdictions that fail to file their SRREs
20 and other documents. But we have not actually formally
21 adopted hearing procedures or criteria for jurisdictions
22 that fail to implement adequately their SRREs and HHWEs.
23 That's what this item is for.

24 Very briefly, we followed the same basic format
25 in terms of hearing procedures and criteria as the

1 previous procedures that we've used with three minor
2 exceptions. Previously, we had talked about doing a
3 formal notice of 30 days, and we have -- we are proposing
4 reducing that to a 25-day formal notice for these. And
5 that's purely a scheduling issue, because we're concerned
6 about losing an extra month of time in terms of noticing
7 and getting hearings set.

8 Secondly, the criteria for failure to implement
9 plans are more specific in statute than they were for
10 failure to file. There are, I forget, seven or eight, off
11 the top of my head, that are actually listed in statutes
12 that those, of course, are reflected in the procedures and
13 criteria that we have.

14 And then we've made some modifications to delete
15 some criteria that we used in the past that didn't make
16 any sense. For instance, how late the document is, we're
17 not dealing with that issue here.

18 One other issue I do need to mention, it was
19 pointed out to me on the list of statutory criteria, the
20 statute uses the term included but not limited to, and the
21 list of criteria that I have developed I did not include a
22 catch-all and any other factor the Board may want to
23 consider, so we will make that adjustment to reflect that.

24 And with that, if there's any other questions, I
25 can answer those or request approval.

1 CHAIRPERSON MOULTON-PATTERSON: Okay. Thank you.

2 Any questions?

3 Okay, make a motion.

4 BOARD MEMBER JONES: We have to, but it seems
5 ironic that we held off on SB 1066, but we're going to do
6 the mechanism for the fines and stuff.

7 Resolution 2002-1, consideration of staff
8 recommendation regarding enforcement options for
9 jurisdictions that have failed to complete compliance
10 orders for SRRE and HHWE implementation, including public
11 hearing procedures and criteria for penalties.

12 BOARD MEMBER MEDINA: Second.

13 CHAIRPERSON MOULTON-PATTERSON: We have a motion
14 to approve resolution 2002-1 by Mr. Jones seconded by Mr.
15 Medina.

16 Please call the roll.

17 SECRETARY VILLA: Eaton?

18 BOARD MEMBER EATON: Aye.

19 SECRETARY VILLA: Jones?

20 BOARD MEMBER JONES: Aye.

21 SECRETARY VILLA: Medina?

22 BOARD MEMBER MEDINA: Aye.

23 SECRETARY VILLA: Paparian?

24 BOARD MEMBER PAPARIAN: Aye.

25 SECRETARY VILLA: Moulton-Patterson?

1 CHAIRPERSON MOULTON-PATTERSON: Aye.

2 Okay. That takes us to the public comment
3 section. We have two public comments, and I know you'll
4 keep it brief, because this has been a very long day for
5 us.

6 Jim Grecko followed by Paul Relis.

7 MR. GRECKO: Public comments about 1066.

8 For the record, Jim Grecko independent
9 consultant. I'm speaking on behalf of myself, no
10 particular jurisdiction. But there are two issues that
11 may be coming to your attention in the coming months
12 relevant to 1066.

13 I'm aware of a jurisdiction who submitted their
14 annual report and they were right on goal. And then
15 subsequent review found there was a misreport for one
16 quarter of disposal tonnage that when added back in
17 reduced them down to one percentage point below their
18 goal.

19 They're confronted now should they submit a time
20 extension request for maybe one year to get one percent or
21 have they really implemented enough programs to satisfy
22 the good faith effort substantiation.

23 The feeling is, and I try to work closely with
24 staff and I try to understand staff, and I try to
25 understand the direction your board is going in, the

1 feeling right now is not to submit a one-year extension
2 because if we're looking at whether they complied in the
3 year 2000, and they're one percent below their goal, their
4 disposal tonnage for one year later 2001 has already been
5 reported.

6 Now, we're waiting for the final numbers to see
7 where did they come out in 2001, but what I'm bringing up
8 is will you be expecting jurisdictions that may not be on
9 goal, but maybe one percentage point two percentage points
10 short to apply for a time extension.

11 They may have or may not have reserved the right,
12 so that's an issue now I wanted to bring up.

13 Another issue is, I'm aware of another
14 jurisdiction submitted their annual report for the year
15 2000 and it came in at 43 percent. That's what the
16 numbers said. They weren't as sure with the numbers, but
17 that's what their disposal numbers said.

18 Staff reviewed the application, found out because
19 of an incorporated jurisdiction that occurred since their
20 base year was approved, they have really a lower base year
21 and they have a diversion rate for the year 2000 of 28
22 percent.

23 Many months ago the jurisdiction's hauler was
24 willing to do a waste generation study, and the results of
25 that study are nearly complete. And that shows they're at

1 49 percent, but the jurisdiction doesn't feel comfortable
2 with that waste generation study and is questioning
3 whether that's accurate.

4 Right now, the jurisdiction is thinking they're
5 at 43 percent or they might be at 28 percent. They're
6 going to submit a time extension. They haven't done it
7 yet, but they're advised to do it by February 1st, because
8 staff has to get on with doing the biennial reviews.

9 So if they submit it to try to cut the shortfall
10 of the seven percent between 43 and 50, that's one set of
11 programs targeting tonnage. And, by the way, I want to
12 make that point, I know you were talking earlier about the
13 percentages that Loma Linda would have to reach.

14 Haulers don't work in percentages, haulers work
15 in pounds, work in tons. And you can see to be at 50
16 percent what was the disposal tonnage that it should have
17 been. We're on a disposal accounting system, so you could
18 quantify more and more diversion, but you're not affecting
19 your diversion rate unless you reduce your disposal.

20 And I know it's inferred. Doesn't that make
21 sense, if you don't dispose it, you divert it. But the
22 better numbers are coming for the disposal reporting
23 system, and we still see problems with the accuracy of
24 those numbers.

25 So I really wanted to be short. But the issue I

1 wanted to raise was you might have a time extension coming
2 for it now, trying to cover a seven percent gap, but four
3 months from now, if the new base year is accurate and says
4 they're at 44 percent, you know, or the 28 percent, it's a
5 different set of numbers, which means it's a different set
6 of programs that have to be implemented to get them to 50
7 percent.

8 CHAIRPERSON MOULTON-PATTERSON: Thank you for
9 bringing that up, and hopefully our workgroup will be able
10 to tackle these.

11 Paul Relis.

12 MR. RELIS: Madam Chair and members of the Board,
13 just a point of clarification of when Mr. Eaton had some
14 discussion of more detail in the 1066. That's why I came
15 up here to listen to how the Loma Linda process was going
16 to go, we are working with our city still on the 1066
17 extensions, those that we're submitting. And hearing
18 about more detail, knowing that the closure date is next
19 week, is there any -- we'll just -- you're going to stick
20 with that and we'll submit as we would, as if I didn't
21 hear this discussion.

22 I mean, I'm just trying to understand, is there
23 any connection between the discussion and the decision on
24 Loma Linda and the filing dates. It's just going to stay
25 the same?

1 BOARD MEMBER EATON: My understanding was the
2 filing date was like last August, but apparently there's a
3 new filing date.

4 MR. RELIS: No, this is for the actual 1066 time
5 extension submittal that's due on February 1st -- 31st,
6 correct. It's just a question, an observation, I don't
7 know.

8 MS. MORGAN: What Mr. Relis is addressing is we
9 have a number of jurisdictions that have documents that
10 are not yet submitted. Their reports were submitted, but
11 they had documents such as their 1066 application that was
12 not yet in.

13 Because we're trying to complete the 99/2000
14 biennial review in a timely fashion, we notified those
15 jurisdictions that they needed to get their documents in
16 to us. We set a date of February 1st, to give them some
17 time. Rather than, you know, just saying get it in as
18 soon as possible, we're trying to put them on a timeline.

19 With this feedback regarding the 1066
20 application, it would seem to us that we should resolve
21 what additional information the jurisdiction may need to
22 include with their application, whatever the next steps
23 we're going to go for, and allow jurisdictions then to
24 revise their application based upon any changes.

25 So we would like to let jurisdictions like Mr.

1 Relis' know that they will have additional time once we
2 have more specific direction for them, if there are
3 changes to the application process, so we'd like to go
4 forward with that.

5 CHAIRPERSON MOULTON-PATTERSON: Yes, I think that
6 would be a good idea.

7 BOARD MEMBER EATON: Do these jurisdictions -- my
8 understanding was is that if they wanted to apply for
9 1066, they had to reserve the right. Did all these
10 jurisdictions reserve the right in a 90-day period prior
11 to the August date which was extended to September,
12 because that's the key issue, right, isn't that what was
13 supposed to take place, if there was an uncertainty on
14 perhaps the Board, they had to reserve the right to file a
15 1066?

16 Are you telling me that that was extended?

17 MS. MORGAN: No, these are all jurisdictions that
18 in their annual report they told us that they were going
19 to be submitting.

20 BOARD MEMBER EATON: They reserved the right.
21 That was unclear.

22 MS. MORGAN: Yeah.

23 CHAIRPERSON MOULTON-PATTERSON: Okay. Well,
24 thank you everyone and the meeting is adjourned.

25 (Thereupon the California Integrated

Waste Management Board meeting adjourned
at 5:55 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

I, DORIS M. BAILEY, a Certified Shorthand Reporter and Registered Professional Reporter, in and for the State of California, do hereby certify that I am a disinterested person herein; that I reported the foregoing proceedings in shorthand writing; and thereafter caused my shorthand writing to be transcribed by computer.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand as a Certified Shorthand Reporter and Registered Professional Reporter on the 4th day of February, 2002.

Doris M. Bailey, CSR, RPR, CRR
Certified Shorthand Reporter
License Number 8751

1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California Integrated Waste Management Board
7 meeting was reported in shorthand by me, James F. Peters,
8 a Certified Shorthand Reporter of the State of California,
9 and thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said meeting nor in any
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 4th day of February, 2002.

15

16

17

18

19

20

21

22 JAMES F. PETERS, CSR, RPR

23 Certified Shorthand Reporter

24 License No. 10063

25